CONTRACT PRICING REFERENCE GUIDE

VOLUME I

PRICE ANALYSIS

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PREFACE

CONTRACT PRICING REFERENCE GUIDES

The Air Force Institute of Technology and the Federal Acquisition Institute jointly prepared a series of contract pricing reference guides for pricing and contract personnel. These guides, listed below, are referenced in FAR 15.805-1.

Volume I - Price Analysis

Volume II - Quantitative Techniques for Contract Pricing & Glossary of Terms

Volume III - Cost Analysis

Volume IV - Advanced Issues in Contract Pricing

Volume V - Federal Contract Negotiation Techniques

The five volumes are part of a curriculum of courses used to help contracting personnel become proficient in the performance of the duties and tasks associated with their particular jobs.

USING THE CONTRACT PRICING REFERENCE GUIDE IN THE CLASSROOM

Classroom Learning Objectives (CLOs)	The classroom learning objectives are listed at the beginning of each chapter. The text/reference provides you with the information necessary to accomplish those objectives. Likewise, the classroom instruction and exercises are designed to help you attain those objectives. Most of the objectives are written in terms of your performance of a duty or task. For example, the Text/Reference provides a step by step guide to performing the duties. In the classroom, you will have opportunities to practice performance of the duties. You will use the Text/Reference as your guide, using such instructional techniques as interactive viewgraphs and case studies.
Interactive Viewgraphs	An interactive viewgraph is a slide on the overhead projector that requires a response from the class. For example, if the instructor is showing a decision table, the "then" side would be empty and you would help fill in the answers. Or perhaps the slide asks a particular question about a list of conditions shown on the slide.
Case Studies	Case studies are written as scenarios or stories about particular procurement situations. There are several questions that follow the scenarios relating to the case and the particular lesson. Sometimes you will have to use information in the Text/Reference to complete a case study.
Reading Assignments	You are responsible for <u>all</u> assigned readings from the chapters. You will spend minimal time listening to lectures. Our philosophy is that you learn best by doing the tasks under simulated conditions.
Testing	There will be testing. Test items are taken <u>only</u> from the assigned readings. All test questions were developed to verify the learning acquired from the course learning objectives which appear on the first page of each chapter in the Text/Reference.

USING THE CONTRACT PRICING REFERENCE GUIDE AT YOUR JOB SITE.

The Text/Reference was developed for use at your job site as well as in the classroom. Its step by step approach, FAR references, structured writing and index are all designed for the easy and quick retrieval of information about the contracting process. Each Text/Reference is "dated" by indicating which Federal Acquisition Circular (FAC) of the FAR system it is current through. This lets you know exactly how up to date it is. You may contract the FAI for updates or annotate your own copy as FAR policies change.

PURPOSE OF THIS CURRICULUM OF COURSES

To Help You Accomplish The Goals Of The Federal Acquisition Process

As a Contract Specialist, your primary goals are to:

1. Obtain the optimum market response to requirements for supplies and services, in terms of:
   - Quality
   - Timeliness
   - Price

   While-
   - Accomplishing socioeconomic objectives
   - Minimizing business and technical risks
   - Maximizing competition
   - Maintaining integrity.
2. Assure that purchased supplies and services are:
   - Delivered or performed when and where specified in the contract
   - Acceptable, in terms of conforming to the contract's specifications or statement of work
   - Provided in compliance with other terms and conditions of the contract.

To Help You Perform Your Duties

To accomplish these goals, Contract Specialists perform more than 75 principal duties. Collectively, these duties constitute the Federal acquisition process. *Exhibit P-1* maps the acquisition process and relates each duty to the overall process. This curriculum has been designed to systematically develop your skill at every duty in *Exhibit P-1*, in the context of accomplishing the overall goals of the Federal Acquisition Process.

Your Challenge

Your challenge is to become proficient in performing the duties described *Exhibit P-1*. Granted, you may presently perform only a subset of the duties. In terms of your career, however, learning the entire range of duties will improve your competitiveness for a great variety of contracting positions, including managerial positions. From the standpoint of the Government, you will be better able to perform any assigned duty if you have first hand knowledge of how that duty relates to the performance of the other duties.

PRESOLICITATION PHASE

Determination of Need	Initiating the Procurement	Analysis of Requirement	Sourcing

Determining Needs 1. Forecasting Requirements 2. Acquisition Planning	**Processing the PR** 3. Purchase Requests 4. Funding **Market Research** 5. Market Research	**Analyzing Requirements** 6. Specifications 7. Statements of Work 8. Services	**Extent of Competition** 9. Sources 10. Set Asides 11. 8(a) Procurements 12. Competition Requirements 13. Unsolicited Proposals **Selection Factors** 14. Lease vs. Purchase 15. Price Related Factors 16. Technical Evaluation Factors **Method and Plan for the Procurement** 17. Method of Procurement 18. Procurement Planning

SOLICITATION-AWARD PHASE

Solicitation	Evaluation-Sealed Bidding	Evaluation-Negotiation	Award
Terms and Conditions 19. Contract Types 20. Letter Contracts 21. Contract Financing 22. Use of Government Property and Supply Sources 23. Need For Bonds 24. Solicitation Preparation **Soliciting Offers** 25. Publicizing Proposed Procurements 26. Preaward Inquiries 27. Prebid/Preposal Conferences 28. Amending Solicitations 29. Canceling Solicitations	**Bid Evaluation** 30. Processing Bids 31. Bid Acceptance Periods 32. Late Offers 33. Bid Prices 34. Responsiveness	**Proposal Evaluation** 35. Processing Proposals 36. Technical Evaluation 37. Price Objectives 38. Cost and Pricing Data 39. Audits 40. Cost Analysis 41. Evaluating Other Terms and Conditions 42. Competitive Range **Discussions** 43. Factfinding 44. Negotiation Strategy 45. Conducting Negotia-tions	**Selection for Award** 46. Mistakes in Offers 47. Responsibility 48. Subcontracting Responsibilities 49. Preparing Awards **Executing Awards** 50. Award 51. Debriefing **Protests** 52. Protests **Fraud and Exclusion** 53. Fraud and Exclusion

Exhibit P-1

POST-AWARD ADMINISTRATION PHASE

Start-Up	Quality Assurance	Payment and Accounting	Closeout
Planning 54. Contract Administration Planning 55. Post-Award Orientations **Ordering** 56. Ordering Against Contracts and Agreements **Subcontracting** 57. Consent to Subcontracts	**Monitoring and Problem Solving** 58. Monitoring, Inspection, and Acceptance 59. Delays 60. Stop Work 61. Remedies **Property** 62. Property Administration **Reporting Performance Problems** 63. Reporting Performance Problems	**Payment** 64. Limitation of Costs 65. Payment 66. Unallowable costs 67. Assignment of Claims 68. Collecting Contractor Debts 69. Progress Payments 70. Price and Fee Adjustments **Accounting** 71. Accounting and Cost Estimating Systems 72. Cost Accounting Standards 73. Defective Printing	**Closeout** 74. Closeout

POST-AWARD ADMINISTRATION PHASE (cont.)

Contract Modification	Termination	Claims	
Modifications/Options 75. Contract Modifications	**Termination** 76. Termination 77. Bonds	**Claims** 78. Claims	

Exhibit P-1

OVERVIEW OF PRICE ANALYSIS (VOLUME I)

The following are among the primary duties from *Exhibit P-1* covered in this course:

Unit of Instruction	***Duty***	***Chapter(s)***	***Focus:***
15	Price-Related Factors	5	Describe price-related factors from offerors
33	Bid Prices	8	Describe price-related decisions in sealed bidding
37	Price Objectives	9	Describe price-related decisions in negotiations
38	Cost and Pricing	3	Identifying price-related data from offerors

CHARACTERISTICS OF THE CURRICULUM COURSES

- Each course in the curriculum builds on the skills and knowledge taught in prior courses.
- Each course covers specific duties and is designated to provide skills in performing those duties.
- Generally, there is a separate lesson for each duty, with a corresponding chapter in the Text/Reference.
- Each lesson introduces the duty, its purpose (learning objective), applicable policies and standards for performance.
- Each lesson contains a flowchart of the steps in performing the duty.
- You will perform selected steps in class, using case studies and other exercises.
- You will be tested.
- For each duty, the Text/Reference serves as a desk reference, with flowcharts, steps in performance and job aids.

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PRICE ANALYSIS

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Introduction to Contract Pricing

Learning Objectives

At the End of This Chapter

At the end of this chapter you will be able to:

Classroom Learning Objective I/1
Identify typical sellers' pricing objectives in a market.

Classroom Learning Objective I/2
Identify the key elements of the Government's pricing objective.

Classroom Learning Objective I/3
Identify the two basic approaches and the elements to contract pricing: price analysis and cost analysis.

Classroom Learning Objective I/4
Identify Acquisition Team members who may be involved in contract pricing and the role each may be expected to play

Chapter Introduction

In this chapter

This chapter covers the following topics:

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I.0 Introduction (cont)

Contract Pricing Environment

An important part of your job as a contract specialist is to conduct the price analyses necessary to ensure that the Government purchases supplies and services from responsible sources at fair and reasonable prices. To begin your study of contract pricing, you will examine the general pricing environment. You will consider the following:

- Definition of Price
- Seller's Pricing Objectives
- Seller's Approaches to Pricing a Contract
- Buyer's Pricing Objectives
- Buyer's Approaches to Pricing the Contract

Definitions of "Price"

From both work and personal business dealings, most people think of price as:

> "the amount of money that a buyer pays a seller for the delivery of a product or the performance of a service."

FAR 15.801

The definition of price in FAR 15.801 emphasizes its components:

> "cost plus any fee or profit applicable to the contract type."

In this course, both definitions of price are important. Primarily, price is defined as the amount the buyer pays for a product or service. However, it is important to remember that, if prices do not cover supplier costs and provide a profit, losses will occur. A firm that is losing money is typically an unreliable supplier—possibly a bankrupt supplier.

I.1 Identifying the Seller's Pricing Objectives and Approaches

Overview

In this section

Buyers and sellers look at the same price from different perspectives. Each party to a sales transaction has unique pricing objectives. As contract specialists, you should be aware of the difference in pricing perspectives between buyers and sellers.

This section covers the following topics:

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I.1.1 Identify Seller's Pricing Objectives

Pricing Objectives

To sellers, contract pricing has two primary, related objectives:

- To cover costs
- To contribute to attaining corporate operational objectives

Cover Costs

Obviously, a firm that cannot cover its costs cannot survive. Many firms would have us believe that they lose money on every unit they sell, but make up for it in volume. Unfortunately, business does not work that way.

Corporate Operational Objectives

Every firm has a set of operational objectives. Clear objectives are necessary to assure profitability. Examples include:

- Short-term and/or long-term profitability
- Market share
- Long-term survival
- Product quality
- Technological leadership
- High productivity

To attain its operational objectives, a firm must cover its costs and earn an overall profit. Some products may sell for less than cost, but if they do, other products must make sufficient profit to compensate for those losses. Profits are essential for:

- Investment
- Product Development
- Productivity Improvement
- Retirement of Debt Principal,
- Rewarding Investors.

I.1.2 Identify Seller's Approaches to Pricing

Seller's Pricing Approaches

In pricing products, sellers use two basic approaches. The table below compares the two approaches to pricing.

PRICING APPROACHES	STRATEGIES
Cost-based Pricing	• Mark-Up Pricing • Margin on Direct Cost • Rate of Return Pricing
Market-based pricing:	• Profit-Maximization Pricing • Market-Share Pricing • Market Skimming • Current-Revenue Pricing • Target-Profit Pricing • Promotional Pricing • Demand-Differential Pricing • Market-Competition Pricing

I.1.3 Review Seller's Cost-based Pricing Strategies

General Approach	The cost-based pricing approach to pricing involves an analysis of a firm's cost to produce a product, and the addition of a reasonable profit to determine the selling price. **Seller cost** will depend on many factors including production methods and product sales volume. The seller's definition of a **reasonable profit** will also depend on many factors. These factors include: • Competition • Objectives of the firm • Necessary investment • Risk involved
Cost-based Pricing Strategies	How is profit calculated and applied? There are three basic strategies: • Mark-up Pricing • Margin on Direct Cost • Rate-of-return Pricing

I.1.3.1 Mark-up Pricing

Definition

Mark-up pricing is the establishment of prices based on direct cost or total cost plus a percentage mark-up. If the base is direct cost, the mark-up covers profit plus indirect costs (i.e., overhead and general and administrative costs). If the base is total cost, the mark-up only covers profit. When discussing mark-up percentages, you must know whether the firm's mark-up is against direct or total costs.

Procedure

To understand mark-up pricing, you must understand the steps followed by a firm when using the technique:

STEP	ACTION
1	Estimate the sales volume.
2	Estimate product unit cost at the estimated sales volume.
3	Determine the mark-up rate to be used.
4	Calculate unit selling price by applying the mark-up rate to the product cost.

Example

Price the following product using straight mark-up pricing:

Given:

Estimated Sales Volume	=	1,000 units
Estimated Unit Cost	=	\$80
Mark-up Rate	=	20%

Calculate Unit Selling Price:

Unit Selling Price	=	Cost + (Mark-up Rate x Cost)
	=	\$80 + (0.20 x \$80)
	=	\$80 + \$16
	=	\$96

I.1.3.1 Mark-up Pricing (cont)

Strategy Implications for Buyers

Profit is set as a percentage of cost. Mark-up rates depend on the product line tradition, competition, and other factors. Similar products are priced using similar mark-up rates. They typically do not consider the investment required to produce the product.

Mark-up pricing is often used in industries that expect customers to negotiate the sales price (e.g., cars). The profit represented in the mark-up is set high enough to provide the seller with room to compromise. Hence, a good buyer should be aware of relevant industry mark-up practices. Knowledge of prevailing mark-ups can be a tremendous advantage in negotiating reasonable prices.

Mark-up pricing is also often used when a product is being designed, modified or produced (or a unique, one of a kind service is being performed) for a single customer (or a small group of customers).

Mark-Up on Direct Costs. A firm that bases its mark-up on direct cost will have a higher mark-up than the firm that bases the mark-up on full cost. Why? Because the mark-up rate must cover overhead costs, as well as profit. A mark-up rate of 100 percent or more may be quite reasonable.

Mark-Up on Total Costs. A firm that bases its mark-up on full costs should have a lower mark-up rate than the firm that bases the mark-up on direct cost only. A mark-up rate of 100 percent on full cost would normally be considered excessive.

I.1.3.2 Margin on Direct Cost Pricing

Definition

Margin on direct cost pricing is similar to mark-up pricing in that price is based on the relationship between cost and profit. Because the margin is based on direct cost, it covers both indirect costs and profit. Instead of adding a mark-up based on a percentage of cost, margin pricing uses direct cost data to calculate a price that will provide a profit margin that is an established percentage of price. Many commercial firms use this technique because it matches their accounting reports where costs and profits are reported as a percentage of sales.

Procedure

Use the following steps to calculate price based on the margin on direct cost pricing technique:

STEP	ACTION
1	Estimate the sales volume.
2	Estimate direct cost at the estimated sales volume.
3	Determine the margin rate to be used.
4	Calculate the selling price by applying the margin rate to the product cost.

Example

Price the following product using margin on direct cost pricing:

Given:

Estimated Sales Volume	=	1,000 units
Estimated Unit Direct Cost	=	$81
Margin Rate	=	40%

Calculate Unit Selling Price:

$$\text{Unit Selling Price} = \frac{\text{Cost}}{(1 - \text{Margin Rate})} = \frac{\$81}{(1 - .40)} = \frac{\$81}{.60} = \$135$$

I.1.3.2 Margin on Direct Cost Pricing (cont)

Strategy Implications for Buyers

Like mark-up rates, margin rates depend on the product line, tradition, and competition. Similar products are priced using similar mark-up rates. A firm's management is often rated by the margin rate that they can obtain.

A good buyer should be aware of relevant industry mark-up practices. Knowledge of prevailing margins can be a tremendous advantage in negotiating reasonable prices, especially when buying in commercial markets.

I.1.3.3 Rate-of-return Pricing

Definition

Rate-of-return pricing is also similar to mark-up pricing in that profit dollars are added to estimated costs. However, when using this pricing method, you base profit dollars on the desired return on investment, rather than on estimated cost.

Procedure

Follow these steps to determine profit using rate-of-return pricing:

STEP	ACTION
1	Determine desired rate of return on investment
2	Estimate investment required
3	Estimate level of sales
4	Estimate unit cost at the projected sales level
5	Calculate desired unit profit
6	Calculate unit selling price (estimated cost + desired profit)

Example

Price the following product using rate-of-return pricing:

Given:

Desired Rate of Return	=	15%
Estimated Investment Required	=	$600,000
Estimated Sales	=	5,000 units
Estimated Unit Total Cost	=	$80

Calculate Unit Selling Price:

Calculate Desired Unit Profit	=	$\frac{15\% \text{ of } \$600,000}{5,000 \text{ units}}$
	=	$\frac{90,000}{5,000 \text{ units}}$
	=	$18 per unit
Calculate Unit Selling Price	=	$80 + $18
(Unit Cost + Unit Profit)	=	$98

I.1.3.3 Rate-of-return Pricing (cont)

Strategy Implications for Buyers	In rate of return pricing, profit is set based on investment, desired rate of return, and projected sales. Firms that use this method of pricing are probably more sensitive to changes in overall sales volume than firms using the other cost-based pricing methods. They are concerned about the rate of return, not just a mark-up or margin rate. A lower item price coupled with a higher sales volume can actually increase the rate of return. On the other hand, a higher item price coupled with a lower sales volume can decrease the rate of return.

I.1.4 Review Seller's Market-based Pricing Strategies

Introduction

In a competitive market, the seller must consider the four "P"s of marketing: price, product, place, and promotion. Firms must develop pricing strategies to accomplish overall marketing objectives based on their assessment of market conditions (e.g., forecasts of supply and demand) and the economic condition of the business entity.

Market-based Pricing Strategies

The following market-based pricing strategies can be used in various market conditions:

- Profit-Maximization Pricing
- Market-Share Pricing
- Market Skimming
- Current-Revenue Pricing
- Target-Profit Pricing
- Promotional Pricing
- Demand-Differential Pricing
- Market-Competition Pricing

I.1.4.1 Profit-maximization Pricing

Definition	In profit-maximization pricing**,** the seller assumes that demand falls as prices increase, and grows as prices decrease. A firm using this strategy carefully analyzes the market to find the combination of price per unit and quantity of sales that maximizes profit.
Strategy	When employing this strategy, the seller considers the following points: • Is demand sensitive to price changes? ◊ As price increases, does demand decrease? ◊ As price decreases, does demand increase? • What is the point of profit maximization? This is determined through analysis of the relationship between price and demand. This pricing strategy is **most effective** in situations where: • Price is an important marketing factor affecting demand. • Competitors react relatively slowly to price changes. • Suppliers and dealers react relatively slowly to price changes. • Actual relationships between price and customer demand can be effectively estimated. The profit-maximization strategy is **least effective** when the market reacts rapidly to all changes in marketing mix.
Strategy Implications for the Buyer	This method of pricing is not commonly seen in Government contracting. In Government contracting, the purchase quantity estimates are generally fixed, based on the needs of the Government. No matter how low the offeror's price, the quantity acquired by the Government does not change. Thus, there is no advantage to the offeror to offer price lower than that necessary to win the contract. Prices in multiple award Federal Supply Schedules are a possible exception. Another possible exception are inventory buys, when the amounts ordered by inventory managers vary from one period to the next based in part on price/quantity tradeoffs. Be aware of the relationship between price and quantity in the marketplace. Working with users to take advantage of price breaks can save the Government substantial sums of money.

I.1.4.2 Market-share Pricing

Definition	Market-share pricing is based on the assumption that long-run profitability is associated with market share. When using this strategy, the goal is to dominate the market through market penetration. Firms set prices relatively low to win customers and discourage competition. Early losses may occur, but as volume increases, cost per unit decreases and long-term profits are achieved.
Strategy	When employing this strategy, the seller considers the following points: • Build efficient production facilities • Set price at or below competitors' prices to win market share • Lower prices as costs fall
Strategy Implications for the Buyer	As a buyer, you should encourage mass production efficiencies that may reduce contractor costs and provide a reasonable profit, while limiting effective competition. The model T Ford is one example. Ford drove down prices to reach more customers. You should discourage a contractor **"buy-in,"** (i.e., bid below cost to win a contract and exclude others from the market) when there is evidence that the contractor may jeopardize contract performance because the contract price will not cover costs. You should be particularly concerned when sellers: • Have limited financial resources, or • Are apparently gambling on capturing a larger share of the market (and of unit sales) than they are likely to achieve.” Note: Companies that switch from a "market skimming" to a "market-share" pricing strategy often see their overall profits drop alarmingly despite increases in unit sales.

I.1.4.3 Market Skimming

Definition	In market skimming, prices are set to achieve a high profit on each unit by selling to buyers who are willing to pay a higher price for a product of perceived higher value. After the demand of these buyers is satisfied, or competitors produce similar products at lower prices, prices may be reduced to increase volume and maintain overall profitability.
Strategy	When employing this strategy, the seller considers the following points: • Establish a high price to achieve a high profit margin at relatively low volume. • Decrease price over time to attract buyers not willing to pay the price premium. IBM PC and Apple Macintosh computers are good applications of this strategy: • Prices remained relatively high for years • Firms catered to buyers willing to "pay for the best" • As quality competition increased, prices began to decrease
Strategy Implications for the Buyer	As a buyer, you should resist user attempts to "pay for the best" when the "best" is more than the Government needs or the perception of quality is based more on superior marketing than on a superior product. You should encourage attempts at source development to increase competition and control prices.

I.1.4.4 Current-revenue Pricing

Definition	In current-revenue pricing, the emphasis is on maximization of current revenue rather than profit or long-term revenue. Firms using this strategy are typically concerned about long-term market uncertainty or the firm's financial instability. To them, a sure dollar today is much more important than the possibility of more dollars tomorrow.
Strategy	When employing this strategy, the seller considers the following point: • Determine the price/quantity combination that maximizes revenue.
Strategy Implications for the Buyer	You need to be aware that this strategy predominates when risk is high. Action to reduce risk will likely be rewarded with lower prices and a more stable business environment. Firms pricing product crazes, like the "hula hoop," are likely to consider current-revenue pricing. • Demand is high one day, but may disappear the next • Near-term cash recovery is more important than long-term profitability Firms with limited financial resources may also employ this strategy. • If near-term cash needs are not met, there will be no long term for the firm • Unfortunately, concentration on the near-term may also jeopardize the long-term future of the firm

I.1.4.5 Target-profit Pricing

Definition	Target-profit pricing is an application of return-on-investment pricing to the competitive market. Product decisions are based on the expected rate of return.
Strategy	When employing this strategy, the seller considers the following points: • Determine price based on cost-based rate-of return calculations. • Reject products that cannot earn the required rate of return.
Strategy Implications for the Buyer	While this strategy can be applied in very competitive situations, it has most effective application in markets where there is some degree of product differentiation. For example: • General Motors has a history of pricing automobiles to achieve 15 to 20 percent return-on-investment. • Public utility prices are typically set based on prescribed rates of return. Many firms are dropping Government sales because they believe that required rates of return cannot be attained. They believe that emphasis on competition, and initiatives like component break-out limit the profitability of developing and producing products for Government sales.

I.1.4.6 Promotional Pricing

Definition	In promotional pricing, products are priced to enhance the sales of the overall product line rather than to assure the profitability of each product.
Strategy	When employing this strategy, the seller considers the following points: • Determine whether selling a product at a loss, loss leader, will increase the sale of related products and increase profit. • Determine whether selling a product at a high, prestige, price will improve the product-line quality image and increase profit.
Strategy Implications for the Buyer	This strategy can be used for pricing a wide range of consumer and industrial products, from groceries to electronics and office products. You need to be aware of some of the forms promotional pricing can take. "Loss-leader" pricing is probably the most common example. The price of one, or a group of items, is reduced to near cost, or even below. Customers are attracted to buy the low-priced items and buy other related items at the same time. "Prestige" pricing uses a high-quality, high-priced item to enhance the image of an entire product line and attract more buyers. "Bait and switch" pricing is another version of this strategy. The buyer is lured to the seller by a low-priced item, and then switched to a "better" item during the sale.

I.1.4.7 Demand-differential Pricing

Definition	In demand-differential pricing, products or services sold in different market segments are priced in a way that is not consistent with the marginal costs related to segment differences.
Strategy	When employing this strategy, the seller considers the following points: • Identify the segmentation factors that may affect pricing: ◊ Customer ◊ Product Form ◊ Place ◊ Time • Determine the demand intensity in each segment. • Identify actual and potential competitors. • Assure that demand-differential will not breed customer resentment.
Strategy Implications for the Buyer	You need to be aware of the effect of the various segmentation factors on different products. • Customers may pay different prices based on buying power or negotiation skills—for example, automobile purchases. In addition, different classes of customers (e.g., wholesalers, retailers, and governments) may pay different prices. • Product-form such as electronic component assembly may warrant a price higher than the price of the components plus assembly. • Location of sale of the product may affect price. The price of an item sold in New York may be substantially greater than the price of the item in Ohio plus the shipping charge to New York. • Time may affect pricing, particularly in industries that have substantial fixed investment and identifiable peaks in demand. Utilities, for example, offer lower prices for service during "off peak" hours.

I.1.4.8 Market-competition Pricing

Definition	In **Market-competition Pricing,** emphasis is on competitive action/ reaction to pricing actions that competitors have taken or are expected to take. Firms following this pricing strategy in relatively homogeneous markets establish prices based on what the competition charges or what they think the competition is going to charge.
Strategy	You may find that different companies may set prices at a level that keeps pace with competitor's prices. When employing this strategy, the seller considers the following points: • Determine competitor prices and/or anticipated prices. • Set price to keep pace with competitor prices. Major strategy applications include "sealed-bid" and "going-rate" pricing. **"Sealed-bid"** pricing forces the seller to: ◊ Estimate what competitors will bid ◊ Determine what the seller can profitably bid ◊ Submit the bid knowing that it will be accepted or rejected without further discussion **"Going-rate"** pricing requires the seller to: ◊ Determine what competitors are charging ◊ Establish product price within an established range of the competition.
Strategy Implications for the Buyer	Government policy on competition and market pricing is designed to encourage sellers to establish prices using market-competition pricing. You need to remember that this is only one method of market pricing. Many firms are reluctant to compete in a market where success is achieved by low price alone

I.2 Identifying Government's Pricing Objectives

Overview

In This Section

This section covers the following topics:

TOPIC	SEE PAGE
I.2.1 Pay a Fair and Reasonable Price	I-24
I.2.2 Price Each Contract Separately	I-34
I.2.3 Exclude Contingencies	I-35

Government Pricing Objective

When buying for the Government, your primary pricing objective for all contact actions is to acquire supplies and services from responsible sources at **fair and reasonable** prices.

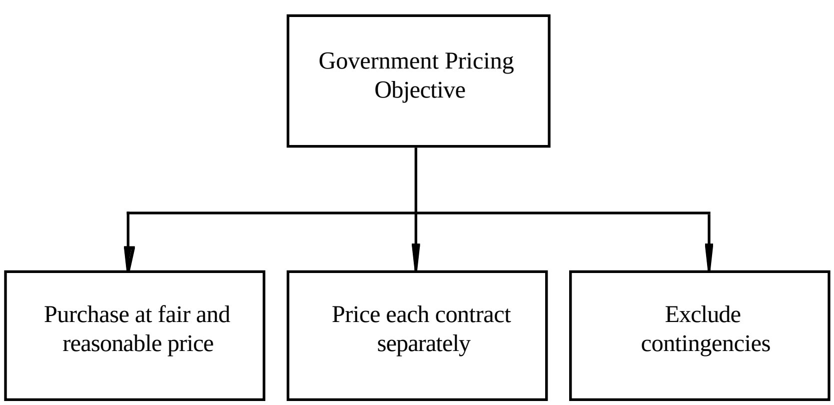
Other FAR Part 15 Objectives

FAR 15.802(b)

When awarding contracts through the negotiated procedures of FAR Part 15, you must also:

- Price each contract separately and independently and NOT (1) use proposed price reductions under other contracts as an evaluation factor, or (2) consider losses or profits realized or anticipated under other contracts.
- NOT include in a contract price any amount for a specified contingency to the extent that the contract provides for price adjustment based upon the occurrence of that contingency.

The figure below graphically depicts how these three elements form the foundation of the Government's pricing objectives.



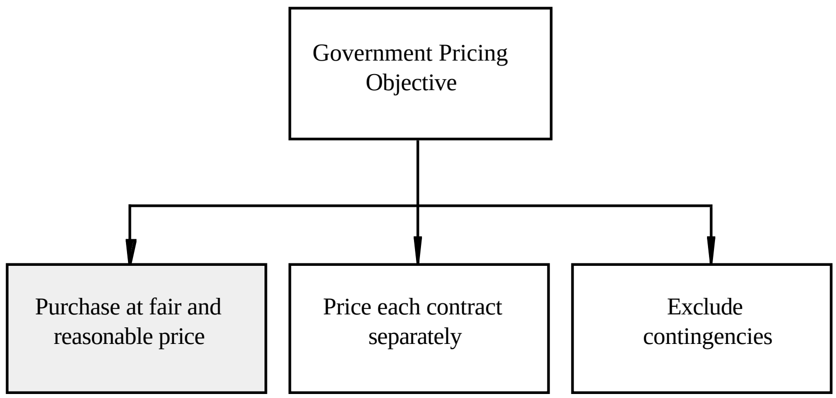
I.2.1 Pay a Fair and Reasonable Price

Understand Fair and Reasonable

FAR 15.803(c)

The first element of the Government pricing objective requires that contract prices be "**fair and reasonable.**"

Per FAR 15.803(c), the contracting officer's primary objective in pricing a contract is to "balance the contract type, cost, and profit or fee negotiated to achieve a total result and price fair and reasonable to both the Government and the contractor." The FAR does NOT define the term "fair and reasonable price." Two separate tests are implied in the term—(1) that an offered price must satisfy the test of "fairness", and (2) also the test of "reasonableness"



To understand the phrase "fair and reasonable," you must consider two questions:

- What is "fair"?
- What is "reasonable"?

I.2.1 Pay a Fair and Reasonable Price (cont)

What is "Fair"?

1. Fair to the Buyer.

"Fair to the buyer" means a price that is in line with (or below) either of the following:

- The fair market value of the contract deliverable (if that can be ascertained through price analysis). "**Fair market value**" is the price that you *should* expect to pay, given the prices of bona fide between informed buyers and informed sellers under like market conditions in competitive markets for deliverables of like type, quality, and quantity.

- The (1) total allowable cost of providing the contract deliverable that would have been incurred by a *well managed, responsible firm using reasonably efficient and economical methods* of performance plus (2) a reasonable profit.

As a buyer, you would consider a price that is TOO HIGH to be unfair. What happens if you agree to a price that is too high?

- You will have failed to fulfill your most basic and fundamental fiduciary duty as a contracting officer for the Government.

- You will waste scarce Government funds.

- Since you are publicly accountable as a Federal employee for your decisions, you may have to answer to management, the Inspector General, the General Accounting Office, a Congressional committee, or the public at large.

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I.2.1 Pay a Fair and Reasonable Price (cont)

What is "Fair"? (cont)

2. Fair to the Seller

"Fair to the seller" means a price that is realistic in terms of the seller's ability to satisfy the terms and conditions of the contract. Why should you care if a low offer is realistic? Because an unrealistic price puts both parties at risk. the risk t the Government is that the firm—to cut its losses—might:

- Cut corners on product quality
- Deliver late
- Default, forcing a time-consuming reprocurement
- Refuse to deal with the Government in the future or be forced out of business entirely

Comp. Gen. Decision B-238877, Matter of: Diemaster Tool, Inc., April 5, 1990

Below-Cost Prices. Below-cost prices are NOT necessarily unfair to the seller. "A bidder, for various reasons, in its business judgment may decide to submit a below-cost bid; such a bid is not invalid. ... Whether the awardee can perform the contract at the price offered is a matter of responsibility."

FAR 3.501

On the other hand, be on guard against the practice of "buying-in," which FAR 3.501 defines as "submitting offers below anticipated costs, expecting to:

- Increase the contract amount after award (e.g., through unnecessary or excessively priced change orders); or
- Receive follow-on contracts at artificially high prices to recover losses incurred on the buy-in contract"

FAR 803(d)

FAR 3.501 presents a number of techniques to prevent such a contractor from recovering buying-in losses. One is "treatment of unreasonable price quotations," with reference to FAR 15.803(d). This FAR section (among other things) advises contracting officers to consider risks to the Government represented by the proposed contract type and price.

I.2.1 Pay a Fair and Reasonable Price (cont)

What is "Fair?" (cont)

FAR 9.103(c)

Mistakes. The offered price may be unexpectedly low because the seller has made gross mistakes in estimating costs or is otherwise nonresponsible. "The award of a contract to a supplier based on lowest evaluated price alone can be false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs. While it is important that Government purchases be made at the lowest price, this does not require an award to a supplier solely because that supplier submits the lowest offer. A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors."

FAR 14.406
FAR 15.607
FAR 15.608

Hence, the purpose of price or cost analysis is "not only to determine whether [the offered price] is reasonable, but also to determine the offeror's understanding of the work and ability to perform the contract." If a vendor offers a price that is **far below** other offered prices or your estimate of the probable price, treat the offer as a potential "mistake." In such cases, both Parts 14 and 15 authorize factfinding to determine whether the offeror understands the work and can perform at the offered price.

The following decision table determines whether to award a contract to a very low priced offer in regards to whether a mistake had been made in the offer's price.

If the Offeror...	Then...
Affirms its technical and financial ability to perform at the offered price	Award (whether or not the offeror is likely to make a profit at that price)
Acknowledges a mistake	Follow the applicable procedures of Part 14 or 15 to resolve the mistake
Refuses to admit to a mistake but CANNOT affirm its ability to perform at that price	Reject the offer

I.2.1 Pay a Fair and Reasonable Price (cont)

What is "Fair"? (cont)

FAR 15.9

Single Source Procurements. When negotiating single source contracts, do NOT force a below-cost price on the offeror even if you believe that the offeror has the financial ability to absorb the probable loss. Instead, negotiate a contract of a type and a price that is likely to cover all allowable costs of performance, assuming reasonable economy and efficiency, and provide a reasonable profit (consistent with FAR profit policies). Even your opening position in such negotiations should NOT be a "below cost" number. Rather, your opening position should be based on a more optimistic reading of the potential production improvements, risks, and costs of providing the contract deliverable than that of the target position on price. If the offeror submits a price well below your opening position, it might be a mistake.

What is "Reasonable"?

A **reasonable price** is a price that a prudent and competent buyer would be willing to pay, given available data on (1) market conditions, (2) alternatives for meeting the requirement, (3) the evaluated price of each alternative, and (4) technical evaluation factors (in "best value" competitions).

1. Reasonable Under Market Conditions

Economic forces such as supply, demand, general economic conditions and competition change constantly. Hence, a price that is reasonable today may NOT be reasonable tomorrow.

- Supply and Demand

  The forces of supply and demand can have a significant effect on product prices:

  – If demand is constant, decreasing supply usually results in higher prices, while increasing supply usually results in lower prices.

  – If supply is constant, decreasing demand usually results in lower prices, while increasing demand usually results in higher prices.

- General Economic Conditions

  General economic conditions affect the prices of all products, but the effect will NOT be the same for every product. Inflation and deflation affect the value of the dollar. Boom, recession, and depression affect available production capacity.

I.2.1 Pay a Fair and Reasonable Price (cont)

What is "Reasonable" ? (cont)

- Competition
  When competition does NOT exist, the forces of supply and demand may NOT work effectively. The buyer or seller may have an advantage in the pricing decision process.
  - Markets can be defined by considering: the number of buyers, the number of sellers, product homogeneity, and ease of market entry and exit.
  - The buyer's relative pricing power compared with that of sellers changes in different market situations. The table below examines the relative pricing in each situation.

I.2.1 Pay a Fair and Reasonable Price (cont)

What is "Reasonable"? (cont)

Level	Buyers	Sellers	Market Entry/Exit	Relative Pricing Power
Perfect Competition	many independent	many independent	relatively easy	Pricing balance between buyers and sellers
Effective Competition	limited independent	limited independent	relatively easy	Relative pricing balance between buyers and sellers
Oligopoly	many independent	few independent	restrictions	Relatively greater pricing advantage to sellers
Oligopsony	few independent	many independent	relatively easy	Relatively greater pricing power to buyers
Monopoly	many independent	one	restrictions	Considerable pricing power to sellers
Monopsony	one	many independent	relatively easy	Considerable pricing power to buyers
Bilateral Monopoly	one	one	restrictions	Pricing power established by negotiation (as in sole source Government negotiation)

I.2.1 Pay a Fair and Reasonable Price (cont)

What is "Reasonable"? (cont)

2. Reasonable Considering Price-related Factors

In making any acquisition, you should consider the alternatives. In a competitive acquisition, you should first consider how an offered price compares with competitive offers. However, your analysis should NOT end there. You should also consider other alternatives for acquiring the product or service. For example, FAR 14.404-1(c) and 15.608(b) both provide for canceling a solicitation when:

- Otherwise acceptable offers are at an unreasonable prices
- A cost comparison as prescribed in FAR 7.3 and Office of Management and Budget (OMB) Circular A-76 shows that in-house performance by the Government is more economical
- Offers were NOT independently arrived at in open competition
- For other reasons, cancellation is clearly in the public's interest

3. Reasonable Considering the Evaluated Price of Each Alternative

A prudent buyer will consider not only the price tag of a contract deliverable but any cost of acquiring and owning the deliverable not covered by the contract price. For instance, a prudent buyer will pay $50 more for Brand X air conditioner if Brand Y air conditioner uses $75 more power on average per cooling season (all other things being equal).

In competitive procurements based on fixed prices, Government buyers may incorporate price-related factors in solicitations to account for such costs. After receipt of offers, price-related factors are applied to determine the "evaluated price" of each offer. Similarly, contracting officers must determine the "evaluated total estimated cost" of Best and Final Offers in competitive procurements of cost reimbursable contracts (as described in Chapter 14).

Examples:

- **Direct Costs Not Included in The Contract Price.** The solicitation allowed offers to submit offers either for f.o.b. destination or f.o.b. origin. To identify the low offer, you must add the Government's shipping costs to offered f.o.b. origin prices

I.2.1 Pay a Fair and Reasonable Price (cont)

What is "Reasonable?" (cont)

- **Costs of Ownership Not Included in The Contract Price.** Your market research, prior to soliciting, has identified two products which could satisfy your requirement. Product A has the lowest commercial price tag. Product B is more reliable and less costly to repair, which could save the Government thousands of dollars over the projected years of operation. When operating costs are important and quantifiable, develop price-related factors for the solicitation to reflect them.

FAR 15.605(f)

- **Costs of Contract Award and Administration.** Your RFP solicited line item by line item prices and also an aggregate price for all line items. The contracting officer could split the line items among five offerors, which would result in a total price of $100,000. Or the contracting officer could award all line items to the firm that offered the lowest aggregate price—$100,300. When multiple awards are possible, the FAR directs contracting officers to assume an administrative cost to the Government of $500 per contract. Given this assumption, the aggregate award represents a total cost of $100,800 vs. a total cost of $102,500 for five awards.

Even in noncompetitive procurements, be alert to potential risks and costs NOT covered in the offered price. A price that seems reasonable on the surface may be unreasonable if proposed terms and conditions would shift costs tot he Government. For instance, an offered price may seem reasonable until you discover that he proposed terms and conditions have shifted responsibility for furnishing the necessary tooling from the firm (per the RFP) to the Government (per the proposal). Likewise, a contractor's proposed price, regardless of amount, might be unreasonable if conditioned on the use of a cost reimbursement contract that transfers an inappropriate portion of the risk of cost growth to the Government.

4. Reasonable Considering Non-Price Evaluation Factors.

In some acquisitions, the test of reasonableness is whether an offered price represents the "best value" for the Government's dollar, considering both price-related factors and also such nonprice factors as the relative technical capabilities of the competing firms. In particular, do NOT compete cost reimbursable contracts primarily on the basis of lowest proposed costs. That would only encourage offerors to submit unrealistically low estimates and increase the likelihood of cost overruns.

I.2.1 Pay a Fair and Reasonable Price (cont)

Applying Judgment to the Determination

FAR 15.803(c)

In conclusion, your determination whether an offer is "fair and reasonable" is a matter of judgment. There is no simple formula in which you can just plug in a few values and receive a firm answer of "fair and reasonable." Determining what is "fair and reasonable" depends on market conditions, your alternative price-related factors, and the technical evaluation factors that relate to each procurement. It also depends on what price you can negotiate with an offeror. Since in a more complicated procurement, it is unlikely that you will get the exact price you want, you must apply your judgment as to the fairness and reasonableness of the price you have negotiated. FAR 15.803(c) states:

> "Price negotiation is intended to permit the contracting officer and the offeror to agree on a fair and reasonable price. Price negotiation does not require that agreement be reached on every element of cost. Reasonable compromises may be necessary, and it may not be possible to negotiate a price that is in accord with all the contributing specialists' opinions or with the contracting officer's prenegotiation objective. The contracting officer is responsible for exercising the requisite judgment and is solely responsible for the final pricing decision."

FAR 15.803(d)

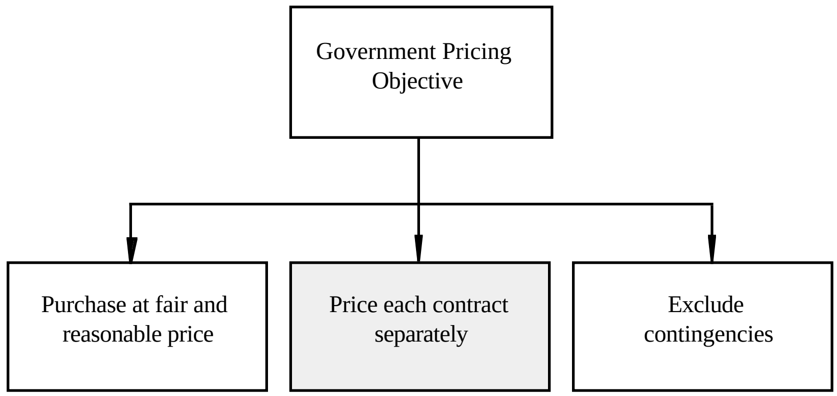
If in your judgment there is no alternative to paying an unfair and unreasonable price, follow the guidance of FAR 15.803(d).

> "If, however, the contractor insists on price or demands a profit or fee that the contracting officer considers unreasonable and the contracting officer has taken all authorized actions (including determining the feasibility of developing an alternative source) without success, the contracting officer shall then refer the contract action to higher authority. Disposition of the action by higher authority should be documented."

I.2.2 Price Each Contract Separately

Second Element of Government Pricing Objective

The second element of the Government pricing objective requires that contracts be priced separately.



Perspective

It is human nature to try to balance one contract against another in terms of financial results.

A seller's position might be that the firm lost money on the last contract; therefore, an effort should be made to make up for the loss on the next contract.

A buyer's position might be that the contractor made too much profit on the last contract; therefore, the next contract should be structured to restrict profit.

Government Contracting

While these attitudes may be understandable in a personal sense, they are NOT valid in Government purchasing.

Government acquisition is very complex because:

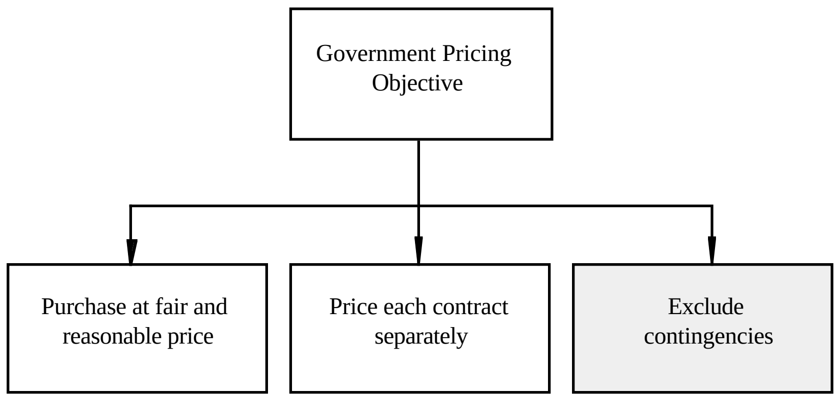
- buyers and sellers do NOT have perfect knowledge of all transactions between a contractor and the Government
- the market forces of competition, supply, and demand change
- business conditions change

Thus, you MUST price each contract separately and independently to ensure that all proposed prices are fair and reasonable to all involved parties.

I.2.3 Exclude Contingencies

Third Element of Government Pricing Objective

The third element of the Government pricing objective requires that contracts exclude contingencies that CANNOT be reasonable estimated at the time of award.



Contingency Definition

A **contingency** is a possible future event or condition arising from presently known or unknown causes, the outcome of which is NOT determinable at the present time.

Types of Contingencies

FAR 31.205-7

You should know that there are two types of contingencies that are important in Government contracting, those that may arise from presently:

- Known and existing conditions, the effects of which are foreseeable within reasonable limits of accuracy
- Known or unknown conditions, the effects of which CANNOT be measured so precisely as to provide equitable results to the contractor and the Government

I.2.3 Exclude Contingencies (cont)

Pricing Decision

In Government contracting, part of the Government's total pricing objective is NOT to include, in a contract price, any amount for a specified contingency, if the occurrence or effect of the contingency CANNOT be equitably priced at the time of contract award.

This table shows you how to handle each type of contingency in terms of the contract price:

CONTINGENCY	EXAMPLES	CONTRACT PRICE
Foreseeable within reasonable limits of accuracy	• Cost of rejects • Cost of defective work	Contingencies of this type should be included in the estimates of future costs so as to best estimate of future cost.
CANNOT be measured so precisely as to provide equitable results to the contractor and to the Government	• Results of pending litigation • Costs of volatile material price changes	Contingencies of this type should be excluded from the cost estimates under the several items of cost, but should be disclosed separately (including the basis on which the contingency is computed) to facilitate the negotiation of appropriate contract coverage.

For example, if you have extensive production experience with a given product, the contractor and the Government can likely agree on the amount of scrap that cam reasonably be expected during production. This type of contingency should be included in contract cost estimates.

On the other hand, in times of volatile material price changes, it would be unreasonable to both parties for an offeror to include a contingency to cover significant price increases when none may occur. In this situation, you should consider use of a contract type (e.g. fixed-price economic price adjustment) that provides for separate consideration of volatile price changes. Separate consideration will provide for better contract pricing and more effective competition.

I.3 Identifying Government Approaches to Contract Pricing

Overview

In this Section

This section covers the following topics:

TOPIC	SEE PAGE
I.3.1 Identify Price Analysis Considerations	I-38
I.3.2 Identify Cost Analysis Considerations	I-40

Approaches to Determine Fair and Reasonable

In Section 1.1, you learned that your primary pricing objective as a Government buyer is to acquire supplies and services from responsible sources as **fair and reasonable** prices

In the Government, you can use two basic approaches to determine if the contract price is fair and reasonable:

- Price analysis
- Cost analysis

In this section, you will learn about each of these approaches, how it is defined, when it is used, and key elements to consider in the utilization of each approach.

I.3.1 Identify Price Analysis Considerations

Definition of Price Analysis FAR 15.801	**Price analysis** is the process of examining and evaluating a proposed price to determine if it is fair and reasonable, without evaluating its separate cost elements and proposed profit.
When to Use Price Analysis FAR 14.407-2 FAR 15.805-1	You MUST use price analysis for all purchases, whether or not cost analysis is required, EXCEPT when certified cost or pricing data are required. When cost or pricing data are required, you are not required to perform a price analysis, however, you should still perform a price analysis whenever possible. Whenever you do perform a price analysis, tailor the depth of your analysis to the size of the purchase. You should do this by considering the potential cost of overpricing and the administrative cost of performing the price analysis. If you CANNOT determine that price is reasonable using price analysis alone, consider supplementing the price analysis with cost analysis.

I.3.1 Identify Price Analysis Considerations (cont)

Bases for Price Analysis

FAR 15.805-2

Price analysis **always** involves some form of comparison with other prices. As the contracting officer, you are responsible for selecting the bases for comparison that you will use in determining if a price is fair and reasonable, such as:

- Competitive bids or proposals
- Catalog, market, or regulated prices
- Prior offers and/or contract prices
- Rough yardsticks and cost estimating relationships
- Independent Government estimates

The order in which the bases for price analysis are presented on this list represents the general order of desirability.

However, the order is NOT set in concrete. Moreover, you should use all bases for which you have recent, reliable and valid data. For instance, you would be well advised to consider the last price paid in addition to current competitive offers—especially if the prior contract was awarded last month and at a reasonable price.

For example, comparisons with commercial catalog, market, or regulated prices can be just as desirable as comparisons with competitive offers. After all, the prices of commercial products are defined by commercial market competition.

Independent Government estimates are normally considered to be the least desirable comparison base for price analysis. However, in cases (such as construction) where estimates are based on extensive detailed analysis of requirements and the market, the Government estimate can be one of the best bases for price analysis.

I.3.1 Identify Price Analysis Considerations (cont)

Buyer Evaluation and Documentation

Price analysis is a user evaluation; thus, price analysis is a subjective evaluation. For any given procurement, different bases for price analysis may give you a different view of price reasonableness. Even given the same information, different buyer/contracting officers might make different decisions about price reasonableness.

It is YOU who must be satisfied that the price is fair and reasonable.

YOU must also document the file concerning the rationale that YOU used in making the pricing decision. The individuals who may review your file later may NOT know or understand the factors that affected your decision.

I.3.2 Identify Cost Analysis Considerations

Definition of Cost Analysis

FAR 15.801

Cost analysis is the review and evaluation of the separate cost elements and proposed profit/fee of:

(a) an offeror's or contractor's cost or pricing data, and

(b) the judgmental factors applied by the offeror in projecting from the data to the estimated costs.

The purpose of the evaluation is to form an opinion on the degree to which the proposed costs represent what the cost of the contract should be, assuming reasonable efficiency and economy.

When to Use Cost Analysis

FAR 15.804

FAR 15.804-6

You will be required to perform cost analysis when you:

- Require the offeror to submit Certified Cost or Pricing Data in accordance with FAR 15.804. See Chapter 2 for more information on the requirements of FAR 15.804.
- Do NOT require Certified Cost or Pricing Data, but you do require the offeror to submit partial or limited data to support your determination of price reasonableness. In such situations, the FAR requires that you request only that data which the contracting officer considers necessary to determine a price reasonableness.

Definition of Contract Cost

FAR 15.801

Contract cost is the sum of the allowable **direct and indirect costs** allocable to a particular contract, incurred or to be incurred, less any allocable credits, plus any applicable cost of money.

FAR 31.202

Direct cost is any cost that can be identified specifically with a final cost objective, such as a contract.

FAR 31.203

Indirect cost is any cost that CANNOT be directly identified with a single, final cost objective, but is identified with two or more final cost objectives or an intermediate cost objective.

FAR 31.202

For reasons of practicality, any direct cost of minor dollar amount may be treated as an indirect cost if the accounting treatment is consistently applied to all cost objectives and the treatment produces substantially the same results as treating the cost as a direct cost.

I.3.2 Identify Cost Analysis Considerations (cont)

Definition of Profit/Fee

FAR 15.902

Profit/Fee is the dollar amount **over and above allowable costs** paid to the contractor to motivate contractor performance. Together contract cost and contract profit/fee total contract price. Thus contract profit is an important element of contract price and must be considered in cost analysis. Each agency must establish a structured approach for analysis of proposed profit/fee.

Identifying Contract Costs

Not all contract costs are cash expenditures during the contract period. Major contract costs can fall in the following categories:

- **Cash expenditures**—the actual outlay of dollars in exchange for goods and services
- **Expense accrual**—expenses are recorded for accounting purposes when the obligation is incurred, regardless of when cash is paid out for the goods or services.
- **Draw down of inventory**—the use of goods purchased and held in stock for production and/or direct sale to customers. The term refers to both the number of units and the dollar amount of items drawn out of inventory.

For example, both direct and indirect costs can result from a draw down of inventory and many indirect costs are accrual expenses.

TYPE OF CONTRACT COST	EXAMPLE
Cash expenditure	Payment by cash, check, or electronic funds transfer to a vendor for raw materials.
Expense accrual	Incurring of an obligation in the current year to pay an employee a retirement pension at some point in the future.
Draw down of inventory	Electronic components purchased in large volume against anticipated total demand and held in inventory until drawn out to fill a specific order. While the components were paid for in the past, the drawing out of a component to meet a contract need is a reduction of the assets of the firm and therefore a cost to the contract.

I.3.2 Identify Cost Analysis Considerations (cont)

Cost Analysis Supplements Price Analysis

Price analysis is required even when cost analysis is performed. Cost analysis, by itself, CANNOT establish a reasonable price because it concentrates on costs and internal cost or pricing data. This can lead to bad pricing because these data do NOT necessarily provide any clue to what the costs should be, what the value of the products or services are, or what the price would likely be if determined through market competition.

For example, suppose that you wanted to purchase a custom-made automobile identical to a Chevrolet Caprice. You go to your neighborhood mechanic and ask him to build a car for you, and he agrees. In building the car, he gets competitive quotes on all the parts and necessary tooling. He pays minimum wage to all his workers. He asks only a very small profit because he enjoys the challenge.

How do you think the final price will compare to a car off an assembly line? Probably at least ten times more expensive. Parts alone may be five times more expensive. The entire cost of tooling will be charged to one car. Labor, although cheaper, will likely nor be as efficient as assembly-line labor. Is the price reasonable? That decision can only be made through price analysis.

I.4 Identifying Potential Acquisition Team Members

Introduction

In this Section

In some cases, you may need help from other personnel to analyze prices. This section speaks to the types of individuals who may be available to assist you.

This section covers the following topics:

TOPIC	SEE PAGE
I.3.1 Identify Potential Team Members	I-44
I.3.2 Identify Typical Roles in Contract Pricing	I-45

1.4.1 Identify Potential Team Members

Acquisition Team

FAR 1.102-3
FAR 1.102-4

The Acquisition Team includes everyone involved in the acquisition -- beginning with the customer and ending with the contractor providing the product or service.

The Government is committed to providing training, professional development, and other resources necessary for maintaining and improving the knowledge, skills, and abilities of all Government Acquisition Team participants. This commitment applies both to the individual's particular area of expertise within the Government and the individual's role as a Team member.

Potential Team Members

For most contracts, the Acquisition Team will be relatively small. The following will typically play a key role in contract pricing:

- Contracting officer or Contract Specialist
- Requirements manager (i.e., Program or Project Manager)
- End User
- Commodity Specialist

You might also obtain assistance from one or more of the following:

- Inventory manager
- Auditor
- Technical Specialist
- Transportation, Property, and Logistics Managers
- Legal Counsel
- Competition Advocate
- Administrative Contracting Officer and Administration Specialists
- Cost/Price Analyst

1.4.2 Identify Typical Roles in Contract Pricing

Team Member Pricing Roles

This table summarizes the role that potential Acquisition Team members might play in making or supporting the contract pricing decision.

POTENTIAL MEMBERS	TYPICAL ROLE IN CONTRACT PRICING
Contracting Officer or Contract Specialist	The contracting officer is the person with authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer operating within the limits of their authority as delegated by the contracting officer. As a contract specialist you may be responsible for performing a wide variety of contracting activities under the authority of the contracting officer assigned to the contract. In this capacity, you will likely provide key input to the pricing decision, but the ultimate decision on price reasonable rests with the contracting officer.
Requirements Managers	Requirements managers initiate acquisitions by preparing purchase requests. Among other things, purchase requests specify the requirement and include the manager's best guess of the cost of contracting for that requirement (i.e., "Independent Government Cost Estimate"). After you receive of the purchase request, requirements managers often can help: • Review alternatives for improving the solicitation, • Identify potential price-related factors for award, • Account for significant discrepancies between different comparison bases used in price analysis, • Provide advice and information for price-related decisions.
End Users	The end user may or may not be the requirements manager. If the requirements manager is not the end user, you may find it useful to consult the end users when building the solicitation and making price-related decisions. In addition, the end user may be more knowledgeable about the product and a better source for a Government estimate than the requirements manager
Commodity Specialists	Some organizations have dedicated commodity specialists who, among other things, heavily research the markets for their respective commodities.
Inventory Managers	Inventory managers keep track of large stocks of products in Government warehouses and other such facilities. Among other things, inventory managers generate purchase requests for replacement supplies as users draw on the Government stocks. They tend to be especially concerned about the solicitation/contract, in terms of its potential impact on delivery, inventory levels, and inventory costs.
Auditors	Auditors are accountants with specialized training and experience in examining and analyzing cost or pricing data provided by offerors and contractor records (particularly accounting records). Their support can be invaluable in cost proposal analysis. In the Department of Defense, contract auditors are assigned to the Defense Contract Audit Agency (DCAA). In other agencies, auditors are typically assigned to the agency Inspector General.

1.4.2 Identify Typical Roles in Contract Pricing (cont)

Team Member Pricing Roles

Continuation of the table summarizing the role that potential Acquisition Team members might play in making or supporting the contract pricing decision.

TEAM MEMBERS	TYPICAL ROLE IN CONTRACT PRICING
Technical Specialists	These specialists generally write specifications or statements of work and technical evaluation factors and evaluate technical proposals. In many acquisitions, the requirements manager acts as the technical specialist. Larger acquisitions, however, may involve teams or panels of technical experts (who, depending on the specific deliverable, may be engineers, scientists, or other such professionals). From a pricing standpoint, technical specialists may have a good understanding of the costs necessary to build a deliverable and also of the types and sources of commercial products that may be available to satisfy a requirement.
Transportation, Property, and Logistics Managers	These specialists can help you select and apply price-related factors that involve transportation costs, Government-furnished property, and ownership costs. All may be involved if you plan to solicit based on a full life-cycle cost model.
Legal Counsel	Lawyers may play a role in clearing contracts and reviewing justifications for such price-related decisions as cancellation of an IFB after opening. Look to them for advice on the solicitation and on making the price-related decisions.
Competition Advocates	Competition advocates review acquisition plans and analyze specifications to identify and, where possible, remove “barriers” to full and open competition. They also review justifications for other than full and open competition. From a pricing standpoint, they can be valuable allies in maximizing price competition.
Administrative Contracting Officers and Administration Specialists	Some Federal agencies have dedicated contract administration offices. These offices are often involved in preaward reviews of contract pricing proposals because contract administrators have more complete information on the production and pricing practices of specific offerors. Administrative contacting officers may also be responsible for pricing certain kinds of contract modifications.
Cost/Price Analysts	Some contracting activities have dedicated cost/price analysts who can assist in performing the tasks described in this book. However, such analysts are typically only available for higher dollar, more complex procurements.

Conduct Market Research for Price Analysis CHAPTER 1

Chapter Vignette

WIDGET ACQUISITION

You have just received a purchase request for 98 widgets. The price estimate developed by the initiator is $5,000 per unit for a total $490,000.

You have never procured a widget before, and you are particularly interested in the reasonableness of the price estimate. You are especially concerned because a price of $490,000 seems like a lot of money for 98 widgets.

Knowing that effective planning is the key to every successful contract, you are about to begin the planning process by using market research to learn more about the product you are acquiring and the market for that product. You wonder what sources of information you can use to learn more about widgets and widget pricing. What steps do you follow?

Chapter 1 outlines a 4-step process to develop a preliminary estimate of the price and otherwise prepare for price analysis before soliciting offers. The process can be used for acquisitions made using simplified acquisition techniques, sealed bidding, or negotiation. Of course, the level of preparation required for each acquisition will depend on such factors as your product knowledge, market knowledge, and the dollars involved.

Learning Objectives

At the End of this Chapter	At the end of this chapter, you will be able to: **Classroom Learning Objective 1/1** Determine whether the independent Government price estimate (IGPE) is supported by factual evidence (i.e., how was the estimate made, where did it come from, and is it reasonable?). **Classroom Learning Objective 1/2** Identify internal and external sources of market data and price-related questions that can be answered by consulting these sources. **Classroom Learning Objective 1/3** Estimate the proper price level or value using market research.

1.0 Introduction

In this Chapter

This chapter covers three important elements in using market research to develop a preliminary estimate of contract price:

SECTION	DESCRIPTION	SEE PAGE
1.0	Introduction	1-3
1.1	Reviewing the Purchase Request and Related Market Research	1-9
	1.1.1 How Was the Estimate Made?	1-11
	1.1.2 What Assumptions Were Made?	1-13
	1.1.3 What Information and Analysis Were Used?	1-15 1-17
	1.1.4 Where Was the Information Obtained?	1-19
	1.1.5 How Did Previous Estimates Compare with Prices Paid?	
1.2	Considering Contract Pricing in Your Market Research	1-20
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	1.2.3 Market Research Data from Buyers and Other Experts	 1-41
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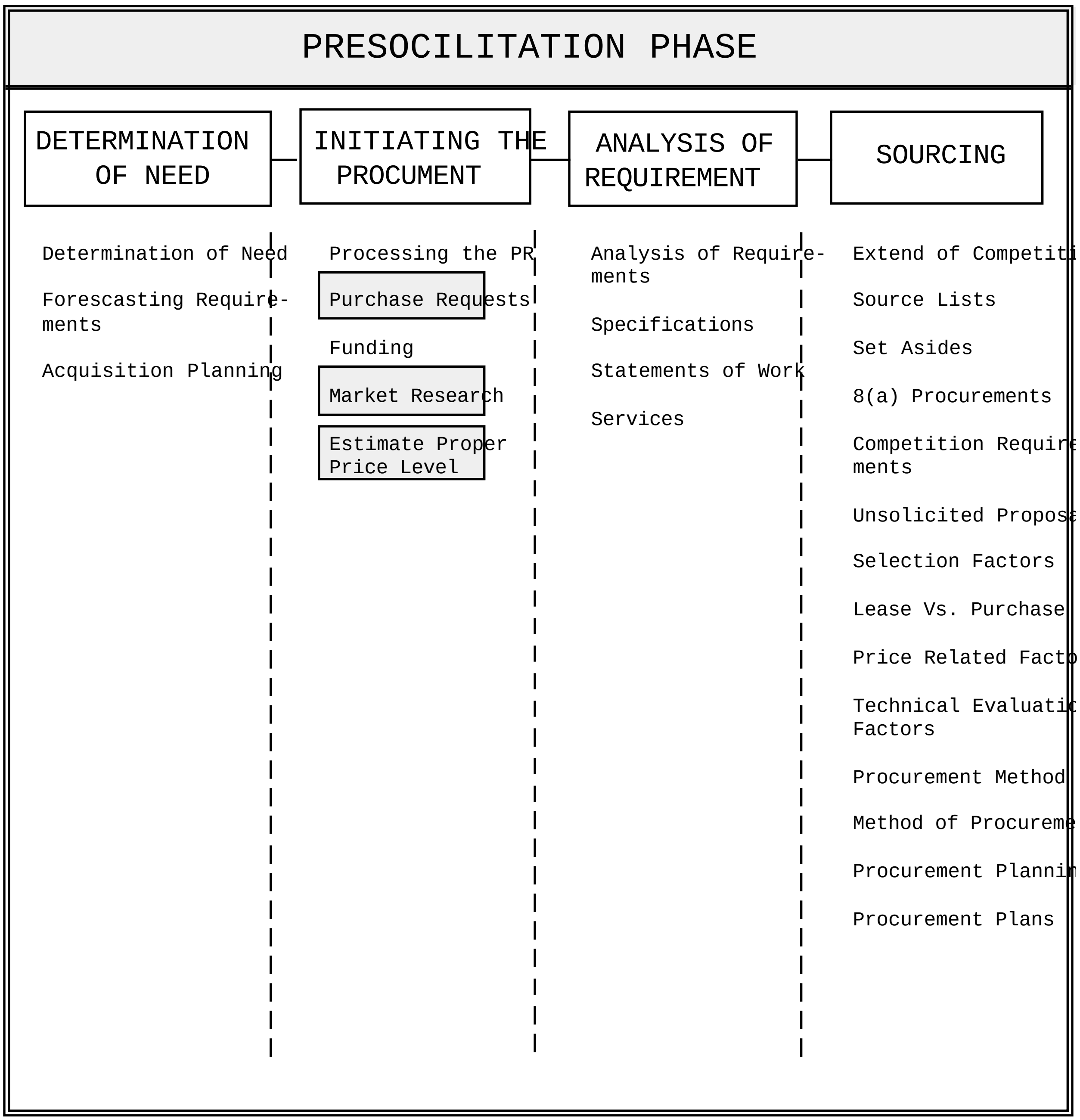
	1.2.5 Market Research Data From Other Sources	
1.3	Using Market Research to Estimate Probable Price	1-44
	1.3.1 Evaluating Your Market Research	1-45
	1.3.2 Developing Your Price Estimate	1-48

1.0 Introduction (cont)

Activities in Initiating the Procurement

The following figure shows the sequence of events or steps that you should follow to prepare for price analysis prior to soliciting. In this chapter, we will examine the importance of reviewing the purchase request, conducting market research, and estimating the proper price level of the acquisition in preparing for price analysis.



1.0 Introduction (cont)

Market Research in Initiating the Procurement

FAR 2.101
FAR 10.000 &
10.001(a)(1)

In Government acquisition, market research is collecting and analyzing information about capabilities within the market to satisfy Government needs. Market research policies and procedures should be designed to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services. The personnel involved must ensure that legitimate needs are identified and trade-offs evaluated to acquire items which meet those needs.

FAR
10.001(a)(2)

To get the supplies and services that will best meet the needs of the Government, the Government members of the Acquisition Team must understand the true needs of Government and know what is available in the marketplace. Market research should be an on-going process for every member of the Acquisition Team, but there are three points where effective market research is particularly important:

1.0 Introduction (cont)

FAR 3.104-3(b)(3)

- The purchase request should reflect the results of market research conducted by the requester. The requester should consider input from other Government members of the Acquisition Team, especially from the user (if different than the requester) and Government technical personnel. You should support and encourage requester market research efforts whenever possible. For example, the catalogs and price lists available in the contracting office may be invaluable to the requester's market research effort. However, you should not take the responsibility for developing the requirements documents and you should remind other members of the Team not to disclose source selection information outside channels authorized by the agency head.

- Before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold, you must conduct market research to assure that together the requirements documents and the contract business terms form the most suitable approach to acquiring, distributing, and supporting supplies and services. This research may be a one-time analysis or part of your on-going effort to know and understand the marketplace for the items that you routinely procure. As you perform your market research, you may question the requirements documents, but you must never change those documents without authorization from the requester.

- Before soliciting offers for acquisitions with an estimated value less than the simplified acquisition threshold, you should perform market research whenever adequate information is not available and the circumstances justify its cost.

1.0 Introduction (cont)

Information for Market Research

FAR 10.001(b)
FAR 10.002(b)(2)

When conducting market research, you should not request potential sources to submit more than the minimum information necessary. Most firms will gladly support Government market research as long as the result will benefit the firm. Most will provide complete information about how the products that they can provide will meet Government requirements. However, they are unlikely to provide information about problems with their products or about other products that could better meet the Government's needs at a lower total cost.

Generally, information on a particular product or industry is available from many sources other than potential offerors. These sources include:

- Knowledgeable individuals in Government and industry;
- The results of recent market research undertaken to meet similar or identical requirements;
- Government data bases that provide information relevant to agency acquisitions;
- Interactive, on-line communication among industry, acquisition personnel, and customers;
- Source lists of similar items obtained from other contracting activities or agencies, trade associations or other sources; or
- Catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available on-line;

1.0 Introduction (cont)

Market Research and Contract Pricing

FAR 10.002 (c) & (d)

The FAR requires that you use the results of market research in developing Government requirements and determining how you will satisfy those requirements. This research is required because the decisions made at this stage of the acquisition process will be key factors in defining what the Government receives and the price that the Government will pay. For example, contracting decisions that:

- Increase contractor performance costs will normally increase contract price.
- Lower contractor performance costs will normally reduce contract price.
- Limit competition will normally increase contract price.
- Facilitate competition will normally reduce contract price.
- Increase contractor risk will normally increase contract price.
- Limit contractor risk will normally decrease contract price.

The better your understand the marketplace the better you will be able to make decisions that will enable you to meet the needs of the Government at a reasonable price.

FAR 15.803 (b)

This same understanding of the marketplace will enable to develop a better estimate of a reasonable price for a contract that meets the needs of the Government. The FAR assigns responsibility for developing a preliminary contract price estimate to the contracting officer:

> "Before issuing a solicitation, the contracting officer shall (when it is feasible to do so) develop an estimate of the proper price level or value of the supplies or services to be purchased. Estimates can range from simple budgetary estimates to complex estimates based on inspection of—the product itself and review of such items as drawings, specifications, and prior data."

Your preliminary price estimate and the factors that affect contract price will be key inputs to the acquisition planning process. For example, the method of contracting and required contract terms and conditions both depend on your estimate of contract price. In addition, your preliminary estimate of contract price will become a key input to your final determination of contract price reasonableness.

1.1 Reviewing the Purchase Request and Related Market Research Overview

In this section

When determining how much reliance you can place on the independent Government estimate in making contracting decisions, you must evaluate the depth and quality of the analysis involved in developing the estimate. As a minimum, you should consider the five areas covered in this section:

TOPIC	SEE PAGE
1.1.1 How Was the Estimate Made?	1-11
1.1.2 What Assumptions Were Made?	1-13
1.1.3 What Information and Tools Were Used?	1-15
1.1.4 Where Was the Information Obtained?	1-17
1.1.5 How Did Previous Estimates Compare with Prices Paid?	1-19

Purchase Request

The purchase request is the document that formally transmits the requirement to the contracting office. It is the purchase request that typically first combines the Government requirements document with the independent Government estimate of contract price. Normally, the purchase request will also include an assurance that funds are available or will be available to fund the acquisition of the required supplies or services.

Independent Government Estimate

FAR 15.805-2(e)

As the name implies, the independent Government estimate must be developed independently by the Government. Independent development is vital because this estimate normally provides your first indication of a reasonable contract price and it is also one of the bases that you should consider in contract price analysis. The estimate development process may be automated or manual, but the best estimates reflect the requester’s market research.

Overview (cont)

Reviewing Requester Market Research

FAR 10.001(a)(2)

FAR requires market research before developing new requirements documents for an acquisition. Logically, this responsibility falls on the requester. The quality of the requester's independent Government estimate usually depends on the quality of the requester's market research. Because of the importance of the independent Government estimate to your selection of appropriate acquisition techniques and eventually your decision on price reasonableness, you should review the estimates carefully, before initiating further procurement action.

1.1.1 How Was the Estimate Made?

Introduction	To judge the reliability of a Government estimate, you must know how the estimate was made.
Estimate Preparation	Purchase requests may be prepared by an automated system or manually by the requester or an estimating specialist.
Automated Purchase Request Estimates	Estimates for purchase requests prepared by an automated system are developed following an algorithm that has been programmed into the system. The most common algorithm is to set the unit price estimate equal to the last unit price paid. Estimates prepared by automated systems rarely take changes in the market situation into account. Even such basic factors as changes in price related to changes in quantity are not considered. For example, assume that the requirement is for 5,000 generators. If the last acquisition was for a single generator, the estimated unit price for each of the 5,000 generators would be the same as the price for a single generator. When you make acquisitions based on automated purchase requests, you must learn what market factors (if any) are considered in preparing the request. Factors not considered in estimate development should be special areas of emphasis in your market research. Once you understand the algorithm for developing the automated estimate, you should remain alert to possible changes in that algorithm.

1.1.1 How Was the Estimate Made? (cont)

Manual Purchase Request Estimates

Estimates for manual purchase requests are typically prepared by the individual preparing the purchase request. Different organizations, and different individuals within the same organization, may have different methods of developing the Government estimate.

Estimates should consider any changes in the marketplace that are identified during market research. Unfortunately, estimates prepared by many requesters do not consider changes in the market situation. Like automated estimates, manual estimates are often based on the last price paid with no consideration for changes in the market situation.

You must determine how each individual estimate was developed so that the other questions concerning reliability can be examined. This also provides a general insight into the amount of time devoted by the requester to market research.

1.1.2 What Assumptions Were Made?

Introduction

Every estimate involves assumptions. Knowing and understanding those assumptions can give you an insight into the estimator's understanding of reliable estimate development.

Analysis of Assumptions

In many cases, user/technical/program personnel are not familiar with relevant cost factors and market forces that affect contract pricing. As a result, assumptions and estimates may not be accurate.

If the rationale used to develop the estimate is not clear or does not seem reasonable, ask questions! IN PRICING THERE ARE NO DUMB QUESTIONS! If you do not know, ask! By asking questions about the independent Government estimate and accompanying documentation, you can identify assumptions that are not consistent with market realities and work with the requester to improve the estimate before the contracting process begins.

Example l

Estimate: The requester used the last price paid for an item to estimate the price for the same item 10 years later.

Assumptions: The requester has assumed that the last price paid was reasonable, and that the market situation has not changed in 10 years.

Analysis: Over a few days or weeks, it may be reasonable to assume that the price has not changed if quantity, delivery, and other factors have not changed. But in this case the last purchase was made 10 years ago? Normally, it is not reasonable to assume that the price has not changed in 10 years. Once you identify the assumptions used in estimate development, you can evaluate them and adjust for any that that do not appear consistent with market realities.

1.1.2 What Assumptions Were Made? (cont)

Example 2

Estimate: The requester estimated the price of 100 warehouse trucks with 3 cubic foot capacity based on the price paid for 2 cubic foot units acquired during the last month.

Assumptions: The requester has assumed that the recent price was reasonable, and that the unit price is not affected by changes in unit capacity.

Analysis: The assumption that unit price will not be affected by the unit's capacity may or may not be reasonable. However, the great difference in capacity should lead you to subject this assumption to closer scrutiny during your market research.

1.1.3 What Information and Analysis Were Used?

Introduction	It is important to determine what the requester knows about the item or service being requested and what estimating tools were used in estimate development.
"Professional Judgment" or "Detailed Under-standing"	Estimates supported only by a reference to the estimator's "professional judgment" are usually not as reliable as estimates based on detailed understanding of the product and the marketplace.
Market Research Information	The **most successful estimators** "know their item." Before they make an estimate, they collect information on the product and the market for that product. Their market research may be a one-time effort or an part of an on-going process that is an integral part of their normal job. The **most reliable estimates** are prepared by estimators who have performed detailed market research and can answer "yes" to the following questions that apply to a particular purchase request: • Did the estimator perform a detailed analysis of the requirements of the purchase request: ◊ Specifications? ◊ Statement of work? ◊ Drawings? ◊ Physical inspection or teardown requirements? • Is the estimator familiar with the market for the item, including: ◊ Last price paid? ◊ Market inflation? ◊ Current commercial market price? ◊ Quantity price breaks? ◊ Possible substitutes?

1.1.3 What Information and Analysis Were Used? (cont)

Estimating Analysis	Market information alone is usually not enough. The estimator must be able to **apply** appropriate analysis to estimate development. Reasoned analysis provides a much more supportable estimate than one that is simply based on estimator judgment and experience. The strongest estimates are usually the result of a reasoned analysis supported by the use of appropriate quantitative techniques. **Reasoned Analysis.** A reasoned analysis is an analysis that sets forth the known information and clearly explains how it was used in estimate development. This analysis may or may not be supported by the use of quantitative techniques. **Quantitative Techniques.** When appropriate, adjustments should be made using accepted quantitative techniques. For example, index numbers can be used to quantify price changes and adjust historical pricing data.
Estimate Support Comparison	Estimates supported by words such as "professional judgment," but no factual data, are typically of little value. Estimates based on good information and the application of appropriate quantitative techniques or reasoned analysis will generally be more accurate and easier to support throughout the acquisition process. For example, in an analysis of changes in technology, which of the following techniques would be more useful in price estimation? **Professional Judgment.** "Based on my 20 years of experience as a Project Engineer and my knowledge of the product, I estimate the price of this unit at $585,000." **Reasoned Analysis.** " We are requesting new high sensitivity replacement units. A year ago, a product could not be produced with this level of sensitivity to high frequency sound. Today, units with similar sensitivity improvements are available at a 30 percent higher price than the less sensitive units they replaced. Therefore the estimated price for this unit, $585,000, is 30 percent higher than the $450,000 price last paid for the less sensitive unit that it will replace."

1.1.4 Where was the Information Obtained?

Introduction

The breadth and depth of the requester's market information will have a substantial impact on the quality of the estimate. Learn what you can about the sources of information used by the requester in estimate development. Some sources of information are better than others. Knowing the sources of information will make it easier for you to evaluate the reliability of the estimate.

Market Information Sources

Many estimators rely exclusively on historical prices as their base for estimate. Historical prices are an excellent source of information on the price at some point in the past but market conditions and Government requirements change over time. Past prices for a similar item may have been based on detailed Government specifications while the current requirement is based on products commonly traded in the commercial market place. In that situation, historical prices may not provide a viable price estimate.

Other valuable sources of information include:

- Catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available on-line;
- The results of recent market research undertaken to meet similar or identical requirements;
- Knowledgeable individuals in Government and industry;
- Interactive, on-line communication among industry, acquisition personnel, and customers;

Encourage requesters to provide source data with their estimates. Information, such as a vendor catalog or portion thereof, will provide an excellent starting point for your market research.

Product Analysis

If the requirement is unique and there is no price history available, the estimator must develop a price estimate by some other form of analysis. One option is for the requester to develop an estimate based on an evaluation of the material and labor required to produce the product. When such estimates are required, the more current the data used to develop the cost estimate, the more reliability you can place on the estimate.

1.1.4 Where was the Information Obtained? (cont)

Misleading Information	Many data sources, such as stock lists, can present misleading information. Such sources have to be continually annotated and updated to reflect changes in prices resulting from dollar value, quantity, and technology changes. Estimators must be particularly careful when using older data.
Emphasize Estimator Independence FAR 3.104-3(b)(3)	While use of vendor catalogs and other methods of market research should be encouraged, estimators MUST BE DISCOURAGED FROM CONTACTING VENDORS FOR SPECIFIC QUOTATIONS. This is particularly true in sole source situations, where the Government estimate may be a primary basis for determining price reasonableness. If both the estimate and the proposal come from the offeror, there is no independent measure of price reasonableness.

1.1.5 How Did Previous Estimates Compare With Prices Paid?

Introduction	An examination of the independent Government estimate should include an examination of the estimator's track record. Just as past vendor performance is an indicator of future contract performance, the quality of past estimator performance is an indicator of the quality of the current estimate.
Comparison with Prices Paid	In evaluating estimates, ask: "Have the estimator's past estimates been close to contract prices determined fair and reasonable through analysis using other price analysis techniques?" If the answer is yes, greater reliance can be placed on current estimates developed using similar techniques. If the answer is no, less reliance should be placed on these estimates.

1.2 Considering Contract Pricing in Your Market Research Overview

In this section

The Independent Government estimates is only one preliminary estimate of contract price. As you conduct your market research prior and answer the questions in the table above, you may identify one or more additional estimates of a reasonable contract price. As a minimum, your research, should consider the data sources identified in this section:

TOPIC	SEE PAGE
1.2.1 Historical Pricing Data for Market Research	1-23
1.2.2 Published Data for Market Research	1-26
1.2.3 Market Research Data from Buyers and Other Experts	1-39
1.2.4 Market Research Data From Suppliers	1-41
1.2.5 Market Research Data From Other Sources	1-43

Factors to Consider in Researching the Market

Each time you conduct market research the process will be different because of differences in Government requirements, market conditions, and other factors. The table below identifies research factors and outlines the type of questions that you should be able to answer when you complete your market research. Not all of the questions identified in the table will be valid for every acquisition. For some acquisitions, you will have many specialized questions that are not covered in the table below. However, the research factors identified and the related questions provide a good framework for your market research.

Overview (cont)

PRICING FACTORS TO CONSIDER IN MARKET RESEARCH	
Research Factor	**You Should Be Able to Answer Questions Such As...**
Pricing History	What information is available concerning past prices paid for the product and changes in the product or market since then?
Current Competitive Conditions	How many sellers are in the market? How many buyers?
Current Overall Level of Demand	What is the relationship of the quantity we intend to buy vis-a-vis the quantities that others buy? Will our volume justify a lower than market price due to the seller's increased economies of scale? Will our volume be so large as to drive the sellers to or beyond full capacity, resulting in unanticipated inflation?
Trends in Supply and Demand	Will demand be higher or lower at the time of award than now? Will supply capacity keep pace with demand?
Pattern of Demand	Is there a cyclical pattern to supply and demand? Would awarding six months from now result in lower prices than an immediate award? Or would it be better to stock up now at today's prices?
Other Market Forces Expected to Affect Contract Price	What forces might drive up prices in the near future? Strikes? Labor shortages? Subcontractor bottlenecks? Energy shortages? Other raw material shortages? What forces might lead us to expect lower prices in the future?
Pricing Strategies	What are the pricing strategies of firms in the market? What are the implications for expected prices?

Chart continued on next page

Overview (cont)

Sources of Supplies or Services	Which firms in the market are the most likely to submit offers to a Government solicitation? Which are the least likely and why? Have there been historic differences between prices paid by the Government vis-a-vis other buyers? Why?
Product Characteristics	What features distinguish one product from another? Which commercial products match most closely with the Government requirements document (as it currently reads in the purchase request). What is the apparent tradeoff between features and price?
Delivery/ Performance Terms	What are the current distribution channels? What are current transportation costs (if available and applicable)? What are the commercial lead-times?
Ownership Costs	What are the commercial warranty terms and conditions (if any) What are the historical repair costs for each product? What are the historical maintenance costs for each product?
Contract Terms and Conditions	What terms and conditions are used in commercial transactions? What terms and conditions have been used in other Government acquisitions? What type of contract is generally used in commercial transactions? Government acquisitions?
Problems	What has been the historical default rate by firms performing similar contracts? What performance problems have typically been encountered? Have similar acquisitions been characterized by claims or cost overruns?

1.2.1 Historical Data for Market Research

Introduction

FAR 7.103(l)

The FAR requires agency heads to assure that "the contracting officer, prior to contracting, reviews: (l) The acquisition history of the supplies and services; and (2) a description of the supplies, including, when necessary for adequate description, a picture, drawing, diagram, or other graphic representation."

One of the reasons for this requirement is to ensure that prior prices are considered in estimating the proper price of the current acquisition. However, you must also remember that information from Government historical price data bases provides a picture of what happened in the past. You must integrate this information with information from other market research to enhance the accuracy of your price estimate.

Sources of Acquisition Histories

Acquisition histories can be found in many sources. Typically, the best sources are contract files, computerized acquisition data files, and manual item records.

Contract Files. Usually, the best source of information on past pricing decisions is the original file of the contract action. Detailed information, and the rationale used to determine price reasonableness should be available in the file.

Computerized Acquisition Data Files. Computers provide immediate access to the data considered most important to purchase decision making. While computer data files may not be as complete as purchase files, they do provide key data in a form that can be used by the buyer in a timely fashion.

Manual Item Records. Manual item records typically provide data similar to that contained in computerized acquisition data files.

Researching Historical Acquisition Pricing Information

Historical prices are an excellent source of market information. Research of historical market information can tell you a lot about the acquisition situation for the product at some point or points in the past. For that information to be useful, you must be able to determine what the market situation was in the past and how it has changed since then. The table below presents research elements that you should consider in your examination of historical acquisition information and questions that you should consider in your research.

1.2.1 Historical Data for Market Research (cont)

HISTORICAL ACQUISITION DATA FOR PRICING	
Research Element	**You Should Be Able to Answer Questions Such As...**
Trends in Supply and Demand	When did past acquisitions take place? Is there any indication of prevailing market conditions at that time?

Pattern of Demand	What quantities were solicited for each acquisition? What quantities were acquired?
Trends in Prices	What was the contract price? How did the unsuccessful offers compare with the successful offer?
Start-up Costs and Pricing Strategy	Did the contract price include one-time engineering, tooling, or other start-up costs? Should future contracts include similar or related costs? Were necessary start-up costs paid for in a manner separate from the price for the item or service?
Sources of Supplies or Services	How many sources were solicited for the prior acquisition? What specific sources were solicited? How many sources offered bids or proposals? What specific sources offered bids or proposals?
Product Characteristics	Are there any significant differences between the Government requirements documents for the prior contract and the current requirements?
Delivery/ Performance Terms	What was the delivery or performance period in days, weeks, months, or years? In what month(s) were the supplies to be delivered or the service to be performed? Did the vendor meet the delivery targets? What was the FOB point? Was premium transportation required for timely delivery?
Ownership Costs	What costs of ownership were associated with the acquisition?
Acquisition Method	What acquisition method was employed for past acquisitions?
Contract Terms and Conditions	What were the general terms of past contracts? Are there any significant differences between terms of the last contract (e.g., packing requirements, type of contract, and the like) and those recommended for this acquisition?
Problems	What problems (if any) were encountered during contract performance?

1.2.2 Published Data for Market Research

Introduction

There are a number of published data sources that can be extremely valuable in identifying sources of pricing information that will be extremely valuable in developing preliminary product price estimates.

Sources of Published Data

Publications which include pricing or related data include:

- Manufacturer and Dealer Catalogs
- Product Brochures and Promotional Material
- Trade Journals
- Source Identification Publications

- Government or Independent Testing
- Federal Supply Schedules (FSS)
- Government Economic Data
- Non-Government Economic Data

Examples of each type of published data are presented in this Section. Other examples are included in Appendix A, Sources of Pricing and Price-Related Information.

1.2.2 Published Data for Market Research (cont)

Typical Data Available by Source

The table below summarizes the sources of pricing related data and typical data available for each source.

TYPICAL DATA AVAILABLE BY SOURCE

Source	Product Specs.	Product Picture	Pricing Info.	Order Quantity Req. Info.	Delivery Data	Source Location	Warranty and Guarantee Info	Independ. Eval..	General Econ. Data
Catalogs	Yes	Often	Yes	Yes	Yes	Yes	Rarely	No	No
Product Brochures	Yes	Often	Often	Often	Often	Yes	Yes	No	No
Trade Journals									
Advertisement	Yes	Often	Rarely	Rarely	Rarely	Often	Often	No	No
Product Evals	Yes	Often	Often	No	No	Often	Often	Yes	No
Articles	Yes	Rarely	Rarely	No	No	No	No	Yes	No
Source ID Pubs									
Yellow Pages	No	Rarely	No	No	No	Yes	No	No	No
Thomas Register	Yes	Yes	No	No	No	Yes	No	No	No
Government or Independent Testing									
Qualified Products Lists	Yes	No	No	No	No	No	No	Yes	No
Underwriters Laboratory	Yes	No	No	No	No	No	No	Yes	No
Federal Supply Schedules	Yes	Often	Yes	Yes	Yes	Yes	Often	Yes	Yes
Got Economic Data	No	No	No	No	No	No	No	No	Yes
Non-Govt. Economic Data	No	No	Some Do	No	No	No	No	No	Yes

1.2.2.1 Manufacturer and Dealer Catalogs

Introduction

Catalogs are familiar sources of data that can be found in both department stores and mail order houses. The manufacturer and dealer catalogs used in Government purchasing resemble these catalogs in the type of information they provide.

Data in Manufacturer and Dealer Catalogs

The table below provides an overview of the typical data you can find in manufacturer and dealer catalogs.

DATA SOURCE	TYPICAL DATA
Catalogs	Product descriptions Pictures Prices and quantity discounts Minimum order requirements Delivery data Points of contact for quotes and orders

1.2.2.2 Product Brochures and Promotional Material

Introduction

Brochures and promotional material provide much greater detail about specific products than would normally be included in a catalog with several thousand other products. While details on pricing and delivery are often included, this information may be excluded in order to provide greater latitude in negotiating the terms of sale.

Data in Product Brochures and Promotional Material

The table below gives an overview of typical data you can find in product brochures and promotional material.

DATA SOURCE	TYPICAL DATA
Product Brochures and Promotional Material	Detailed specifications Pictures Available service guarantees and products Points of contact for quotes and orders Pricing information Delivery data

1.2.2.3 Trade Journals

Introduction

Trade journals provide a variety of information from different sources, including advertisements, product evaluations, and independent articles.

Trade Journal Data Sources

Advertisements typically consist of product descriptions, often with pictures and comparisons with competitor's products. Sources of further information are also identified.

Product evaluations provide independent information to members of the trade who may be considering the purchase of that product or a similar one. Evaluations usually deal with technical capabilities, but often include information on source locations, pricing, and warranties.

Articles about the trade may indirectly provide an independent analysis of product capabilities. Successes or failures in using particular products or services serve as evaluations of their quality.

Trade Journal Data

The table below gives an overview of typical data you can find in trade Journals.

DATA SOURCE	TYPICAL DATA
Advertisements for Products Used in the Trade	General product descriptions Pictures Comparisons with competitive products List prices
Independent Product Evaluations	Strengths and weaknesses of products Warranty or guarantee provisions Comparisons with competitive products Pricing information
Articles	Application of existing products to problem solving Strengths and weaknesses of products in problem solving

1.2.2.4 Government or Independent Testing

Introduction

Product testing by Government or independent laboratories can provide essential data. The data can be used to determine if a product meets minimum requirements and to identify and compare similar products.

Qualified Products Lists

FAR 9.201
FAR 9.202(c)

The results of Government testing often means inclusion on a **Qualified Products List (QPL).** A QPL is a list of products which have been examined, tested, and have satisfied all applicable Government product qualification requirements. When a QPL applies to a particular product, all potential offerors must either be on the list or demonstrate to the satisfaction of the contracting officer that their product meets or can meet QPL standards before the date set for contract award. You can also use QPLs to identify potential sources for similar products.

Underwriters Laboratory

The best known independent testing laboratory is **Underwriters Laboratory (UL)**. Testing and approval by UL is essential for a wide variety of electrical products.

Data from Product Standards and Testing Laboratories

The table below gives an overview of typical data you can obtain from product standards and testing laboratories.

DATA SOURCE	TYPICAL DATA
Qualified Products Lists FAR Subpart 9.2	Results of product tests to Government requirements
Underwriters Laboratory (UL)	Results of tests of electrical products to UL commercial standards

1.2.2.5 Source Identification Publications

Introduction

There are thousands of publications designed to assist you in locating possible sources of product information. The most widely accepted of these are the Yellow Page and the Thomas Register of American Manufacturers.

Yellow Pages

Every city, large or small, has a telephone book with an associated Yellow Pages. Larger cities and metropolitan areas typically have one or more Commercial Yellow Pages and Business Yellow Pages. Many firms advertise in both types, but the business Yellow Pages specialize in the business and industrial products that are more relevant to Government acquisition. Both Commercial and Business Yellow Pages identify firms by the products or services that they provide. Listings may even include pictures of major products.

1.2.2.5 Source Identification Publications (cont)

The Thomas Register of American Manufacturers

The Thomas Register of American Manufacturers, commonly referred to as the Thomas Register, devotes 23 volumes to assisting commercial buyers identify potential product sources. The volumes are divided into four sections:

- Products and Services -- companies listed by product or service;
- Company Profiles -- capabilities and contact information are presented for listed firms.
- Catalog Files -- detailed product information, specifications, drawings, photos, availability, and performance data.
- Inbound Traffic Guide -- intermodal guide to transportation sources.

Data in Source Identification Publications

The table below gives an overview of typical data you can find in the Yellow Pages and the Thomas Register.

DATA SOURCE	TYPICAL DATA
Yellow Pages	Sources of identified products and services by geographic location Specific products within a product service category
Thomas Register	Sources of identified products and services Source capabilities and contact information Product specifications Selected product pictures Product availability Product performance Transportation sources

1.2.2.6 Federal Supply Schedules

Introduction

FAR 8.401
FAR 8.404(a)

The General Services Administration (GSA) is best known for its stock program which buys, stores, and distributes a wide variety of items for use by all Government agencies. However, GSA also directs and manages the Federal Supply Schedule program that provides Federal agencies with a simplified process for obtaining commonly used supplies and services at prices associated with volume buying. GSA establishes indefinite delivery contracts with commercial firms to provide supplies and services at stated prices for given periods of time. The Federal Supply Schedule (FSS) program then issues Federal Supply Schedules (FSSs) that contain the information for placing delivery orders with contractors. Contracting offices can then issue delivery orders directly to the FSS contractors for the required supply or service.

FSS provides you with sources for a wide variety of supplies and services. If an item is on a FSS, you do not need to seek further competition or determine that the prices are fair and reasonable, because the FSS contracting officer must determine that the price is fair and reasonable before the contract is awarded. Even if you do not use the FSS, the Schedules are a ready source of market information.

GSA Advantage

In 1995, GSA initiated a new ordering program known as GSA Advantage. It is an electronic catalog program designed to facilitate user ordering from GSA through use of the Internet at http//www.gsa.gov. By late 1997, you will be able to electronically order any product available from any GSA source, including FSS, through GSA Advantage. FSS contractors will be required to load entire catalogs into the system. As a result, GSA Advantage will also instantly provide a wide variety of product information that you can use in pricing the same or similar products.

FSS Data

The table below gives an overview of typical data available in FSS including FSS available published from GSA Advantage.

DATA SOURCE	TYPICAL DATA
Federal Supply Schedules	Product descriptions Pictures Pricing and discount information Delivery/performance terms

1.2.2.7 Government Economic Data

Introduction

The Federal Government develops and publishes large amounts of economic data. Much of this information is used to make national economic decisions. It is valuable to buyers attempting to develop preliminary price estimates, because knowledge of the economy and market forces is vital.

Data are published by several Government departments and bureaus. The best known sources include:

- Department of Agriculture
- Department of Commerce
- Bureau of Labor Statistics (BLS)
- Federal Reserve System
- Congress

Index Numbers

Specific price comparisons, known as price index numbers, are particularly useful in making price comparisons over time. You can use price index numbers to adjust the price for any purchase or sale of a particular product at any time, to estimate the contract price for your current requirement. In this comparison, you can use information from several acquisitions involving several different vendors.

You can use indexes routinely published by the Government. You can tailor indexes to fit your particular needs. The organizations that prepare Government indexes may even be willing to construct a special price index to meet your estimating needs, if the need for the index justifies their cost of developing it. For example, the Bureau of Labor Statistics provides the Navy with shipbuilding labor indices which they have tailored to assist in estimating the cost of ship construction at commercial shipyards.

Probably the best known Government index is the ***Consumer Price Index*** **(CPI)**, an index published by the Bureau of Labor Statistics. You may be able to use the CPI to evaluate price changes related to labor and labor intensive products. However, the index most commonly used by Government buyers is the ***Producers Price Indexes*** **(PPI)**, another index published monthly by the Bureau of Labor Statistics. You can use the PPI to monitor and estimate price changes for products traded at the wholesale level.

1.2.1.7 Government Economic Data (cont)

Government Economic Sources

The table below gives an overview of typical data available from various Government departments and bureaus.

Data Source	Typical Data
Department of Agriculture	***Agriculture Price Reports*** -- Monthly agriculture commodity *price* ***Agriculture Statistics*** -- Annual agriculture commodity price data
Department of Commerce	***Current Business Reports*** -- Monthly data on wholesale trade and inventories ***Current Industrial Reports*** -- Periodic reports on production and consumption in identified industries
Bureau of Labor Statistics	***Consumer Price Index*** -- Monthly reports on price changes for consumer product ***Producer Prices and Price Indexes*** -- Monthly reports on price changes in wholesale markets
Federal Reserve System	***Federal Reserve Bulletin*** -- Monthly economic indexes and business data
Congress	***Economic Indicators*** -- Monthly information on prices, production, business activity, and purchasing power

1.2.2.8 Non-Government Economic Data

Introduction	There are a number of non-Government sources of economic and market data, including: • Purchasing Organizations • Commodity or Industry Publications • Economic Analysis Services
Purchasing Organizations	The most noted purchasing organization that publishes market data is the National Association of Purchasing Managers (NAPM). The NAPM provides members with monthly information on market price trends and product availability. Data are based on the actual experience and projections of purchasing managers throughout the country.
Commodity or Industry Publications	Numerous commodity and industry publications provide specific market data. Periods of publication and the information presented vary.
Economic Analysis Services	Commercial economic analysis services have also been established to provide estimators with current analyses of general market conditions and price trends. Currently, the economic analysis service most widely accepted by Government purchasing organizations is DRI/McGraw Hill, U.S. Cost Information Service. They provide a variety of service. As the amount of information and the timeliness and the amount of information increases, the price also increase.

1.2.2.8 Non-Government Economic Data

Data from Non-government Economic Sources

The table below gives an overview of typical economic and market data that you can obtain from various non-Government sources.

DATA SOURCE	TYPICAL DATA
Purchasing Organizations	Periodic, usually monthly, analyses of market conditions based on buyer perceptions and economic analysis.
Commodity or Industry Publications	***Chemical Marketing Reporter*** -- Weekly information on market indexes, current prices, and price changes. ***Random Lengths Lumber and Plywood Market Report Service*** -- Weekly information on supplies and prices ***The Black Diamond*** -- Every other month information on solid fuel prices ***Iron Age*** -- Weekly information on steel, ore, primary metals, and scrap prices ***Black's Office Space Guide*** -- Six times annually information on office space leasing prices ***Pulp and Paper Week*** -- Weekly information on paper industry prices, economics, and technology ***Platt's Oilgram Price Report*** -- Daily information on current oil prices ***Textile Pricing Outlook*** -- Information on textile petrochemical, raw material, fiber, yarn, and fabric prices
Economic Forecasting Services	Data on current prices, price changes, price projections, and economic conditions across the economy.

1.2.3 Market Research Data from Buyers and Other Experts

Introduction

FAR 10.002(b)(2)(i))

Buyers and other experts are an important source of market information. This is especially true when they have been involved in the acquisition of the same or similar items. They can refer you to official contract files that you may not otherwise find and they can provide tips and insights that may not appear in official files.

Data from Government Personnel

Examples of Government personnel who can provide information useful in pricing include:

- Buyers
- Contract Administrators
- Technical Experts
- Auditors

The table below gives an overview of typical data you can obtain from Federal Government buyers and analysts.

DATA SOURCE	TYPICAL DATA
Buyers	Information on purchases of the same or similar products Identification of potential sources Information on the capabilities of sources already identified
Contract Administrators	Information on purchases of the same or similar products Information on the capabilities of sources already identified Contractor performance assessment review data
Technical Experts	Identification of potential sources Information on the capabilities and efficiency of sources already identified Identification of price drivers in the Government requirements
Auditors	Information from prior audits, including rate and other cost trends Information from contractor compensation reviews

1.2.3 Market Research Data from Buyers and Other Experts (cont)

Data from

Buyers and other experts from industry, state and local Governments can

Personnel Outside the Government

also provide useful information, particularly for common supplies and services. The information that you can gather will depend on the personnel involved. For example, a buyer from outside the Government can provide the same type of information that you would expect to receive from a Government buyer. However, the amount and types of data that you can gather depends largely on the willingness of the source to release what is often considered proprietary data.

Collecting Information

Information can be gathered in several ways. The two most common methods are interaction at professional meetings and specific questions or surveys.

Professional Meetings and Presentations. Discussions at professional meetings and presentations are a good way to gather general information on purchasing particular categories of supplies and services. Professional organizations such as the National Contract Management Association and the National Association of Purchasing Managers actively encourage such professional development.

Telephone Surveys. Telephone surveys can also provide useful information on potential sources in the area. Both Government and Nongovernment experts are usually anxious to respond to questions from fellow professionals. However, be aware that proprietary data restrictions may prevent many responses.

1.2.4 Market Research Data from Suppliers

Introduction

FAR 15.402 (b) & (e)
FAR 15.404
FAR 15.404
FAR 15.405

Suppliers are a good source of information of market information for planning purposes. However, the FAR requires Contracting Officers to "furnish identical information concerning a proposed acquisition to all prospective contractors." It therefore prohibits interactive exchange of information with prospective offerors concerning a specific future solicitation except through the mechanisms described below.

- **Presolicitation notice.** The notice may be used as a preliminary step in preparation for a negotiated acquisition. Issue the notice to potential sources and synopsize the notice in accordance with FAR 5.2.

- **Presolicitation conference.** The conference may be used in conjunction with presolicitation notices as a preliminary step in preparation for a negotiated acquisition. However, you may only use a presolicitation conference when approved at a level higher than the contracting officer. Never use a presolicitation conference to prequalify offerors.

- **Solicitation for information or planning purposes.** When information necessary for planning purposes cannot be obtained from potential sources by more economical and less formal means, you may determine in writing that a solicitation for information or planning purposes is justified. That determination must be approved, in accordance with agency procedures, at a level higher than the contracting officer, before you issue the solicitation for information or planning purposes.

1.2.4 Market Research Data from Suppliers (cont)

Data from Suppliers

The table below gives an overview of typical data available from these various mechanisms:

DATA SOURCE	TYPICAL DATA
Presolicitation Notices	Expressions of potential offeror interest in the contemplated acquisition. Information on potential offeror's management, engineering, and production capabilities. Other preliminary information based on a general description of the supplies or services involved.
Solicitations For Information Or Planning Purposes	Comments on quantity breaks for discounts. Comments on delivery terms. Information on market conditions affecting the proposed solicitation. Comments on the proposed requirement.
Presolicitation Conferences	Information on uncertainties that may drive up prices. Information on noncommercial requirements that may drive up prices. Information on other aspects of the requirement that may limit competition or affect pricing.

1.2.5 Market Research Data from Other Sources

Introduction	Other important sources of market data include **trade and professional associations, state and local watchdog agencies, and interactive on-line communication groups.**
Trade and Professional Associations	Trade and professional associations can provide information about sources, source responsibility, commercial standards, and cost drivers.
Chamber of Commerce and Better Business Bureau	Professional organizations devoted to business development and the maintenance of responsible business practices, such as the Chamber of Commerce and Better Business Bureau, can provide substantial information on pricing, available competition, and the responsibility of identified sources.
State and Local Watchdog Agencies	State and local watchdog agencies can provide information on the capabilities and pricing of sources, particularly sources accused of price gouging or poor performance.

1.3 Using Market Research to Estimate Probable Price Overview

In this Section

This section covers the following topics:

TOPIC	SEE PAGE
1.3.1 Evaluating Your Market Research	1-45
1.3.2 Developing Your Price Estimate	1-48

Use Market Research to Estimate Probable Price

As you perform your market research, document the sources of information that you considered and what you found. Consider how you can increase competition that includes firms that commonly sell the same or similar items in the commercial market. At the same time, consider how current requirements, particularly Government-unique requirements will affect competition and contract price. Generally, both tasks will focus on the same requirements, because requirements that unnecessarily limit competition will also unnecessarily increase contract price.

1.3.1 Evaluating Your Market Research

Questions to Consider in Evaluating Your Research

The better your research, the more reliance you should be able place on the price estimate that you develop from that research. The table below outlines questions that you can use to evaluate the quality of your market research. Normally, you should check "Yes" or "No" depending on whether you considered a particular factor. However, there may be some acquisitions where a particular question does not apply. For example the first question deals with the use of historical price. If the Government has never acquired the product or a similar product, this question would not apply in your evaluation of estimate quality and you should check "N/A."

1.3.1 Evaluating Your Market Research (cont)

Factors to Consider in Developing and Estimated Price			
Yes	**No**	**N/A**	**In preparing your price estimate, have you considered:**
			Historical prices paid for the product and changes in the product or market since then?
			The current level of competition between prospective offerors and how it will affect contract price?
			How increasing or decreasing the quantity being acquired would likely affect contract price?
			How changing the timing of the acquisition would likely affect contract price because of projected trends in supply or demand?
			How changing the timing of the acquisition would likely affect contract price because of projected cyclical changes in supply or demand?
			How other forces are expected to affect prices in the near future?
			How the pricing strategies of prospective offerors will affect contract price?
			Which firms in the market are expected to respond to the solicitation and how their prices compare with the firms that are not expected to respond?
			Whether the requirements document will unnecessarily increase prices proposed by offerors?
			Whether delivery/performance requirements will unnecessarily increase prices proposed by offerors?
			Whether different products from different vendors will have different costs of ownership?
			Whether contract terms and conditions will unnecessarily increase prices proposed by offerors?
			Ways ameliorate the risk related to problems associated performance of similar contracts?

1.3.1 Evaluating Your Market Research (cont)

Evaluating Your Research	If you can answer "Yes" to all the questions in the table above, you have done an excellent job of market research for estimate development. When you must answer "No," your research is incomplete. For smaller dollar acquisitions, an incomplete evaluation may be acceptable as long at the evaluation covers the factors that you feel are most likely to affect contract price. However, as the estimated price increases, the need for in-depth research also increases.

1.3.2 Developing Your Price Estimate

Different Data Different Estimates

As you perform your market research, you will likely find different data that could lead you to different preliminary estimates of contract price. Using the price that you paid for the item 11 months ago, your estimate might be $19,700. If you use the last price paid for the item plus 4 percent inflation your estimate might be $20,488. The catalog price for a similar item from a commercial vendor might be $19,750. The catalog price for a different item from a second vendor might be $19,900.

Consider Various Estimates

Which estimate is correct? There is no one answer. They all appear to be valid estimates based on the information used to develop them. This demonstrates a common situation -- there is no single estimate that you can say is right to the exclusion of all other estimates. In fact, they define a range of reasonable prices from $19,700 to $20,000.

You could document the various estimates in a paragraph or in a table similar to the following:

PRELIMINARY ESTIMATE OF CONTRACT PRICE

Price Estimate	Estimating Rationale
$19,700	Estimate based on the price determined fair and reasonable 11 months ago under contract XX-9X-XXXX.
$20,488	Estimate based on the price determined fair and reasonable 11 months ago under contract XX-9X-XXXX plus 4 percent inflation estimated using the Producers Price Index for similar items.
$19,750	Estimate based on current FloMo Systems catalog price for the quantity required.
$19,900	Estimate based on current Acme Products catalog price for the quantity required.

Point Estimate

Given this same information, different estimators could have different opinions as to which of these estimates you should use as your preliminary price estimate. That is one reason why it is so important to present the range of possible estimates and the rationale for each. However, in this case an estimate of $19,750 appears most reasonable because it is based on a current catalog price. Remember, the lower $19,700 estimate is 11 months old.

Widget Acquisition (cont)

You contacted the individual who prepared the widget purchase request, and she told you that the estimate is based the $5,000 unit price estimate on a price in a recent trade magazine advertisement. Your review of the item's acquisition history confirms that the unit price for recent acquisitions has been $5,000 to $5,500. Recent acquisition quantities have ranged from 25 to 40 units.

Catalogs from different manufacturers show prices from $4,625 to $6,175 in quantities of 75 to 150.

You are confident that your current solicitation source list includes most major widget suppliers. Whenever you identified a new source during your research, you added the source to your current solicitation list.

Combining all you have learned about widgets, you have set your preliminary estimate of probable price at $4,625 a unit and a total estimated price of $453,250. You should feel confident with your estimate because it is based on a detailed analysis of available information.

Maximize Price Competition **CHAPTER 2**

Chapter Vignette

Purchase Widgets (cont)

To obtain the best possible contract price, you want to assure effective competition for the widget contract. To do that you want to review the contracting strategies and other methods that you can adopt to maximize competition.

Learning Objectives

At the End of This Chapter	At the end of this chapter you will be able to: **Classroom Learning Objective 2/1** Review Statements of Work (SOWs) and related elements of the Schedule and recommend changes to obtain more effective price competition. **Classroom Learning Objective 2/2** Recommend contract terms and conditions to obtain more effective price competition. **Classroom Learning Objective 2/3** Select method(s) of publicizing to obtain more effective price competition.

2.0 Introduction

In this Chapter

In this chapter, you will learn the answers to three questions:

- How can solicitation Schedules (e.g., Part I of the UCF) be improved to yield more effective price competition?
- How can business terms and conditions (e.g., Parts II - IV of the UCF) be improved to yield more effective price competition?
- How can the methods of publicizing the buy be tailored to yield more effective price competition?

The chapter is divided into three corresponding sections:

SECTION	DESCRIPTION	SEE PAGE
2.1	Improving The Schedule	2-11
	2.1.1 Consolidate Requirements	2-12
	2.1.2 Describe government Needs to Promote Competition	2-17
	2.1.3 Review Requirements Documents	2-19
	2.1.4 Use and Maintain Requirements Documents	2-23
	2.1.5 Acquire Other Than New Material	2-26
	2.1.6 Consider Delivery or Performance Schedules	2-28
	2.1.7 Use Liquidated Damages	2-31
	2.1.8 Use Variation in Quality	2-33
	2.1.9 Pursue Restrictive Requirement Relief	2-35

(Table continued on next page)

2.0 Introduction (cont)

In this Chapter (cont)

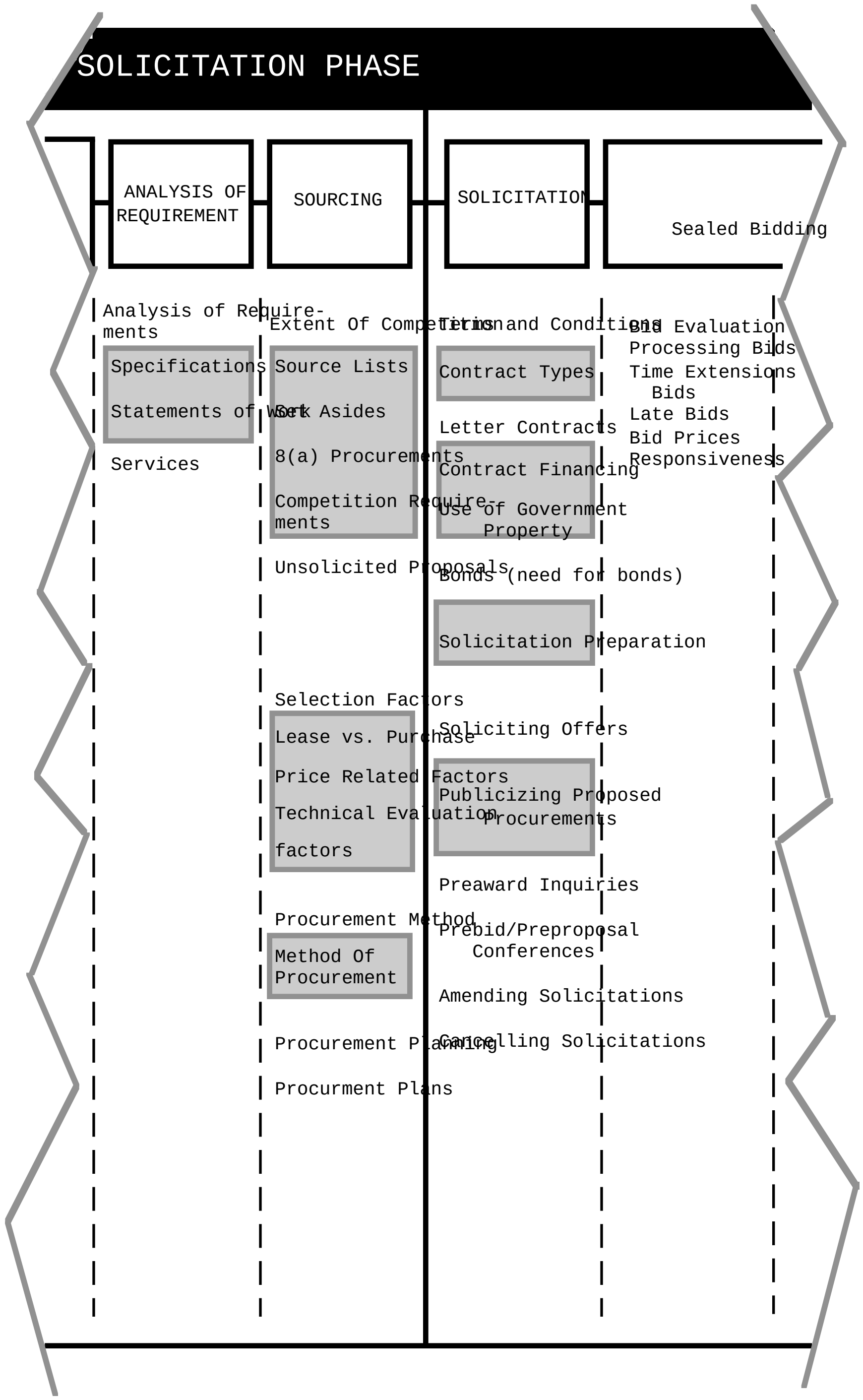
The chapter is divided into three corresponding sections:

SECTION	DESCRIPTION	SEE PAGE
2.2	Improving Business Terms And Conditions:	2-39
	2.2.1 Base the Contract Type on Risk Analysis	2-40
	2.2.2 Review Applicability of Socioeconomic Requirements	2-45
	2.2.3 Match Payment and Finance Terms to Market Conditions	2-47
	2.2.4 Furnish Government Property	2-54
	2.2.5 Consider Warranty Requirements	2-57
	2.2.6 Optimize Price/Technical Tradeoffs	2-59
2.3	Publicizing The Acquisition	2-60
	2.3.1 Strategies for Publicizing the Acquisition	2-61

2.0 Introduction (cont)

Procedural Steps

The following figure shows the sequence of events or steps that you should follow to maximize competition in sealed bidding and negotiations under FAR Parts 14 and 15.



2.0 Introduction (cont)

Why Promote Competition?

FAR 6.101(a)

The Government policy regarding competition is stated in FAR 6.101(a).

> 10 U.S.C. 2304 and 41 U.S.C. 253 require, with certain limited exceptions..., that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts.

You may be thinking, "Yes, that is true, but this is a course in price analysis. Why are we learning about maximizing competition?"

Competition is important to contract pricing in three ways:

FAR 15.805-2(a)
FAR 15.804-(a)

- Competition is widely acknowledged as the best way to encourage firms to offer a quality product at a reasonable price.
- Competitive prices are one of the best bases to use in evaluating the reasonableness of an offered price.
- “Adequate price competition” is the most common basis for exempting offerors from the requirement to submit certified cost or pricing data.

What Is Meant By “Maxi-mizing Price Competition?”

FAR 10.004(a)
FAR 12.213

By maximizing price competition, we mean both:

1. Attracting competitive offers from the best vendors (in terms of their track records for pricing, quality, timeliness, and integrity), and
2. Obtaining offers that are priced as low as reasonably as possible, in part because the solicitation:
   - Reflects the Government's **actual minimum need** and
   - Prospective contract provisions **balance the cost risk** associated with satisfying that need.

(Continued on next page)

2.0 Introduction (cont)

Key Acquisition Team Members

Key Acquisition Team members involved in the communications process are:

- Users—key source of information on the real needs of the Government
- Requirement Managers—key decision makers
- Suppliers—key information source in market research and analysis
- Contracting Personnel—responsible for the effectiveness of the acquisition decision

(Continued on next page)

2.0 Introduction (cont)

Potential Impediments to Competition

In various acquisition situations, you may use many different formats to organize a solicitation or contract. Regardless of the format, there are potential impediments to competition. The table below uses the Uniform Contract Format (UCF) to highlight some of those potential impediments.

UNIFORM CONTRACT FORMAT FAR 14.201 AND 15.406			
Sec	**Title**	**Purpose In The Solicitation**	**Potential Impediments to Price Competition**
Part I — Schedule			
A	Solicitation/Contract Form	The first page of the solicitation/contract, e.g. SF 33.	
B	Supplies or Services and Prices	Lists the supplies or services being acquired, by line item and quantity.	• Failure to consolidate requirements.
C	Description/ Specifications/ Work Statement	Describes the supplies or services listed in Section B	• Use of vague or ambiguous terms. • Excessive (i.e., gold plated) or impractical requirements. • Use of design specifications when performance specifications are feasible. • Brand-name specifications. • Brand-name-or-equal specifications that admit few, if any, equals. • Use of Government-unique specifications for commercial or commercial-type deliverables. • Biased specifications (i.e., specifications geared to the unique features of a single product or of premium priced products).
D	Packaging and Marking	Specifies how the item must be packaged, packed, preserved, and/or marked as appropriate.	• Noncommercial requirements. • Excessive requirements. • Biased requirements.
E	Inspection and Acceptance	Specifies when, where, and how the deliverable will be inspected and accepted, as well as the contractor's obligations for quality assurance.	• Noncommercial requirements. • Excessive requirements. • Biased requirements.

(Chart continuedon next page)

2.0 Introduction (cont)

UNIFORM CONTRACT FORMAT (Continued) FAR 14.201 AND 15.406			
Sec	**Title**	**Purpose In The Solicitation**	**Potential Impediments to Price Competition**
Part I — Schedule (cont)			
F	Deliveries or Performance	Specifies when, where, and how the item(s) must be delivered, or when and where the services must be rendered.	• Noncommercial terms. • Delivery requirements not in tune with market cycles (e.g., requirements for "out-of-season" deliveries.) • Excessively tight deadlines.
G	Contract Administration Data	Accounting and other such information or instructions.	• Noncommercial requirements. • Excessive requirements.
H	Special Contract Requirements	Used for requirements that occur on a contract-by-contract basis.	• Noncommercial requirements. • Excessive requirements.
Part II — Contract Clauses			
I	Contract Clauses	Includes or references most clauses that will apply to work under the contract (e.g., bonds, type of contract, set asides, sub-contracting, foreign sourcing, labor management relations, environmental protection, occupational safety, patents, rights in data, taxes, property, and warranties).	• Noncommercial terms and conditions. • Excessive requirements (e.g., an excessively long warranty period, relative to commercial warranties). • Use of the wrong type of contract, given risks inherent in the work. • Failure to use terms and conditions that could encourage competition.
Part III — List of Attachments			
J	List of Documents, Exhibits, or Other Attachments	Identifies any documents attached to the solicitation, including title, data, and page count.	
Part IV — Representations and Instructions			
K	Representations, Certi-fications, and Other Statements of the Offeror		
L	Instructions, Conditions, and Notices to Offerors	Instructs offerors on preparing and submitting offers, including any requirements for bid samples and descriptive literature.	• Noncommercial requirements • Excessive requirements.

2.0 Introduction (cont)

UNIFORM CONTRACT FORMAT (Continued) FAR 14.201 AND 15.406			
Sec	**Title**	**Purpose In The Solicitation**	**Potential Impediments to Price Competition**
M	Evaluation for Award	Prescribes how offers will be evaluated, e.g. price-related and technical factors.	• Price given too little weight relative to technical factors. • Biased evaluation factors (e.g., geared to unique features of a single product or of premium priced products).

2.1 Improving The Schedule

Overview

In this section

FAR 11.002(a)(1)

Solicitations and contracts must include the product or service requirements that the contractor is expected to meet. These requirements should be specified in a manner designed to promote full and open competition and should only include restrictive provisions or conditions that are necessary to satisfy the minimum needs of the Government.

This section covers the following strategies for improving purchase descriptions and related terms (i.e., Part I of the UCF—Schedule) to obtain more effective price competition:

TOPIC	SEE PAGE
2.1.1 Consolidate Requirements	2-12
2.1.2 Describe Government Needs to Promote Competition	2-17
2.1.3 Review Requirements Documents	2-19
2.1.4 Use and Maintain Requirements Documents	2-23
2.1.5 Acquire Other Than New Material	2-26
2.1.6 Consider Delivery or Performance Schedules	2-28
2.1.7 Use Liquidated Damages	2-31
2.1.8 Use Variation in Quantity	2-33
2.1.9 Pursue Restrictive Requirement Relief	2-35

2.1.1 Consolidate Requirements

Introduction

FAR 7.202
FAR 31.201-1

Federal agencies are required to procure supplies in quantities that will:

- Result in the total cost and unit cost most advantageous to the Government, where practical.
  - ◊ Total cost is the sum of allowable direct and indirect costs allocable to the contract, incurred or to be incurred, less any allocable credits, plus any allocable facilities capital cost of money.
  - ◊ Unit cost is the cost to complete any unit identified in the contract
- Not exceed the reasonable quantity expected to be required by the agency.

In contracting, the general assumption is that larger quantities will attract greater competition and result in lower prices. However, most inventory management systems do not consider the effect of larger quantities on price. Price is considered to be fixed regardless of the quantity purchased. Because inventory management systems typically do not consider the benefits of requirement consolidation, contracting personnel must often take primary responsibility for coordinating consolidation efforts.

2.1.1 Consolidate Requirements (cont)

Consolidation Decision

As you review the Government requirements and prepare the schedules of supplies or services, consider the following:

CONSOLIDATION DECISION		
If you can answer "YES" to the following questions...	**AND...**	**Then...**
Is the contracting office likely to receive more purchase requests for this item or service during the coming year? Can we reasonably estimate total organization requirements for the coming year? Can this requirement be combined with other known requirements to reduce the total cost to the Government?	Quantity and delivery requirements are firm and full funding is currently available.	Consolidate purchase requests into a single definite delivery contract.
	Quantity or timing of requirements is not firm or full funding is not currently available.	Consolidate purchase requests into a single indefinite delivery contract.

Consolidate Purchase Requests

If you expect to receive purchase requests from a number of different activities for the same end item, encourage these activities to submit their purchase requests at roughly the same time. Then award a single contract for the aggregate quantity in the purchase requests.

FAR 17.502

Consider polling the requiring activities by phone if you suspect that a number of requiring activities will need the same end item. You might also consider "riding" the contract of another agency that needs the same end items.

2.1.1 Consolidate Requirements (cont)

Place Economic Order Quantities

The major drawback to consolidating requirements is that you may end up with a warehouse full of supplies that are not immediately needed. The Government incurs a daily cost for storing unused supplies—a cost that may over time outweigh any price breaks from having purchased in bulk. Therefore, when deciding the quantity to acquire at any one time, you should minimize the total cost of both:

1. buying the supplies, and
2. storing the supplies.

This means balancing per unit prices against per unit storage costs, taking into account how many units are likely to be drawn from inventory each month. The "Economic Order Quantity" is the quantity that represents the best balance of acquisition and storage costs—this is the quantity that ideally you should award at any one time.

FAR 17.502

If inventory managers are available, work with them to determine the economic order quantity. You can also solicit information from offerors relevant to determining the economic order quantity.

Use Indefinite Delivery Contracts

Most contracts are definite-delivery. The number of units, delivery dates, and prices are all firmly defined in the contract.

Indefinite-delivery contracts give the Government greater flexibility and buying power by combining requirements over an extended period of time with limited obligation regarding the exact time of delivery. They establish limits on the Government's obligation under the contract and provide flexibility in scheduling deliveries to minimize the costs to the Government for holding and managing inventory.

Types of Indefinite-Delivery Contracts

FAR 16.501

There are three principal types of indefinite-delivery contracts:

- Definite Quantity
- Indefinite Quantity
- Requirements

Indefinite quantity and requirements contracts are further divided into delivery order and requirements contracts.

- A **delivery order contract** is an indefinite quantity or requirements contract for supplies.
- A **task order contract** is an indefinite quantity or requirements contract for services.

2.1.1 Consolidate Requirements (cont)

Definite-Quantity Contract

A definite-quantity contract provides for delivery of a definite quantity of specific supplies or services over an established time period. Deliveries are scheduled as the items are needed.

FAR 16.502

This type of contract is particularly useful when exact need dates are not known at the time the contract is written.

Example of Situation for Use:
Suppose an organization is building a road. A good estimate has been made of the required amount of concrete. Because of the weather and other factors, it is not known when each truckload of concrete will be required. In this situation, a definite-quantity-indefinite-delivery contract can be used, instead of individual purchase orders. The result should be lower prices and more effective project schedule management.

Indefinite-Quantity Contract

FAR 16.504(a)(4)

An indefinite-quantity contract (either delivery order or task order) provides for an indefinite quantity of purchases within limits established in the contract. At the time that the contract is awarded, the Government is only obligated to acquire a stated minimum quantity (or dollar value) during the term of the contract. Delivery orders or task orders may be placed as needed until the maximum quantity (or dollar value) stated in the contract is reached.

2.1.1 Consolidate Requirements (cont)

Indefinite-Quantity Contract

FAR 16.504(c)

Except for indefinite-quantity contracts for advisory and assistance services, give the maximum practicable preference to making multiple awards under a single solicitation. For advisory and assistance contracts that will not exceed three years and $10,000,000 (including all options) you may (but you are not required to) give preference to making multiple awards. If the indefinite-quantity contract for advisory and assistance services exceeds three years and $10,000,000 (including all options), you must make multiple awards unless only one offer is received or a written determination to make a single award is made in accordance with FAR 16.504(c).

Example of Situation for Use:
Suppose an organization needs specialized engineering support. The exact amount of support is not known at the beginning of the year, but the requiring activity can estimate minimum and maximum requirement limits. Here, an indefinite-quantity contract provides a useful contracting and pricing tool.

Requirements Contract

FAR 16.503

A requirements contract (either delivery order or task order) requires the contractor to fill all actual purchase needs for specific requirements at an agreed-to price. The contract must include a realistic estimate of the Government's requirements during the contract period. However, the Government is obligated to order only its actual requirements.

Example of Situation for Use:
Suppose the organization requires a standard commercial item. The exact quantity is not known at the beginning of the year and it is not possible to clearly estimate a minimum and a maximum quantity for the year. However, it is possible to develop an estimate of quantity needs. A requirements contract will permit the organization to contract for needs that may develop based on the estimated quantity.

(Continued on next page)

2.1.1 Consolidate Requirements (cont)

Comparison of Contract Types

The following table compares the obligations and pricing leverage of the three indefinite-delivery-contract types and a definite-quantity-definite-delivery contract:

CONTRACT OBLIGATION AND PRICING LEVERAGE		
Contract Type	**Obligations**	**Pricing Leverage Ranking**
Definite-Quantity- Definite-Delivery	Specified quantity Specified delivery	First, if the entire quantity is known and contracted for at one time. Last, if individual small orders are required.
Definite-Quantity- Indefinite-Delivery	Specified quantity Unspecified delivery over agreed-to period	Second
Indefinite-Quantity- Indefinite-Delivery	Minimum quantity Maximum quantity Unspecified delivery over agreed-to period Normal preference for multiple awards	Third
Requirements	Buyer agrees to buy if needed Seller agrees to sell at agreed-to price Unspecified delivery over agreed-to period	Fourth

2.1.2 Describe Government Needs to Promote Competition

Need Description Objectives

FAR 11.002(a)(1)

FAR requires that agencies describe Government needs in a manner designed to:

- Promote full and open competition, with due regard to the nature of the supplies or services to be acquired; and
- Only include restrictive provisions or conditions to the extent necessary to satisfy the minimum needs of the agency or as authorized by law.

Contracting Officer Responsibility

FAR 1.102-3

Normally, you will not be ultimately responsible for describing Government needs. That will normally be the responsibility of technical experts and the requiring activity. However, as a member of the Acquisition Team, you are responsible for sharing your acquisition knowledge in an attempt to meet the needs of the Government.

Points to Consider in Describing Requirements

FAR 11.002(a)(2)

To promote full and open competition to the maximum extent possible, the Acquisition Team must :

- State supply or service requirements in terms of:
  - ◊ Functions to be performed;
  - ◊ Performance required; or
  - ◊ Essential physical characteristics;
- Define requirements in terms that enable and encourage offerors to supply commercial items, or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items;
- Provide offerors of commercial items and nondevelopmental items an opportunity to compete in any acquisition to fill such requirements;
- Require prime contractors and subcontractors at all tiers to incorporate commercial items or nondevelopmental items as components of items supplied to the agency; and
- Modify requirements in appropriate cases to ensure that the requirements can be met by commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items.

2.1.2 Describe Government Needs to Promote Competition (cont)

Comparing Function, Performance, and Detailed Requirements

As indicated above, there are three basic ways to define a requirement: function, performance, and detailed requirements. A specific Government need could be described using just one of the three ways, but most needs are described using some combination of the three. Still, a particular requirement is normally classified as the type of requirement it most resembles, even though it also contains the elements of other types of requirements.

COMPARING REQUIREMENTS

Requirement Type	States requirement in terms of...	Considerations for use...
Function	Functions to be performed. For example, a container for serving water to individuals.	• When needs are complex and innovation is desirable, they permit the greatest competition. • HOWEVER, requirements that permit a wide variety of approaches can also increase the difficulty of determining price reasonableness, because competitive prices may no longer be useful bases for price analysis (e.g., pewter cup vs. a styrofoam cup).
Performance	Performance required. For example, a serving container capable of holding eight ounces of water for a period of two hours.	• May make it possible for you to obtain competition and innovation on specialized requirements. • HOWEVER, as with function requirements, performance requirements that permit a wide variety of approaches can also limit the usefulness of competitive prices as a base for price analysis
Design	Essential physical characteristics. For example, an eight ounce glass container, three inches in diameter, capable of withstanding temperatures to 120º C.	• Requirements consistent with the designs and production methods common in the appropriate industry can be effective in obtaining price competition and uniform products. • Unique or out of date requirements can restrict competition and increase prices. • Competitive prices typically provide a good base for price analysis. • HOWEVER, if the design requirement is unique or out of date, all the prices offered may be unreasonable.

2.1.3 Review Requirements Documents

General Order of Precedence

FAR 11.101(a)

The Acquisition Team may select from existing requirements documents, modify or combine existing requirements documents, or create new requirements documents to meet agency needs, as long as the Team's selection is consistent with the following order of precedence:

- Documents mandated for use by law.
- Performance-oriented documents.
- Detailed design-oriented documents.
- Standards, specifications and related publications issued by the Government outside the Defense or Federal series for the non-repetitive acquisition of items.

Environ-mentally Preferable Material

FAR 11.101(b)

The Acquisition Team should prepare product descriptions to make maximum practical use of recovered material and other materials that are environmentally preferable.

FAR 23.402

40 CFR Chapter 1, Subchapter I

Recovered materials are waste materials and by-products which have been recovered or diverted from solid waste including postconsumer material. However, recovered materials do not include those materials and by-products generated from, and commonly reused within, an original manufacturing process. The Environmental Protection Agency has developed a list of designated items that are or can be made with recovered materials in 40 CFR Chapter 1, Subchapter I. For example, paper and paper products have been designated as items that can be produced with recovered materials.

FAR 23.703

An **environmentally preferable** material is an item that has a lesser negative effect on human health or the environment when compared with competing products that serve the same purpose. This comparison should be made using principles recommended in guidance issued by the EPA and may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.

2.1.3 Review Requirements Documents (cont)

Standardization Programs

FAR 11.102

The Acquisition Team must select existing requirements documents or develop new requirements documents that meet the needs of the agency in accordance with existing standardization programs described in:

- Federal Standardization Manual
- Defense Standardization Program Policies and Procedures (DoD 4120.3-M).

Product Market Acceptance

FAR 11.103

There may be situations where the agency needs to assure that existing commercial or nondevelopmental products will meet the needs of the Government. For example, the agency may require an item that has a demonstrated reliability, performance, or product support record in a specified environment. In such situations, the agency head may require offerors to demonstrate that the items offered:

- Either:
  - ◊ Have achieved commercial market acceptance; **OR**
  - ◊ Have been satisfactorily supplied to an agency under current or recent contracts for the same or similar requirements; **AND**
- Otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation.

If the agency head determines that offerors must demonstrate market acceptance, develop solicitation criteria that the Acquisition Team can use to evaluate product market acceptance. Ensure that the criteria:

- Reflect the minimum need of the Government;
- Relate to an item's performance and intended use, not an offeror's capability;
- Are supported by market research;
- Include consideration of items supplied satisfactorily under recent or current Government contracts, for the same or similar items; and
- Consider the entire relevant commercial market, including small business concerns.

2.1.3 Review Requirements Documents (cont)

Product Market Acceptance

FAR 11.103

Do not make market acceptance the sole criterion that you use to determine whether an item meets Government requirements. You should also conduct related market research to evaluate the item's acceptability. Whenever you have questions concerning an item's acceptability, you should involve other appropriate members of the Acquisition Team in the evaluation process.

Whenever you use commercial market acceptance as an evaluation criterion, document your rationale in the contract file. In your documentation, describe the circumstances that justify the use of commercial market acceptance criteria, and support the specific criteria being used.

Items Peculiar to One Manufacturer

FAR 6.302-1(c)
FAR 11.104

An acquisition that uses a brand-name description or other purchase description to specify a particular brand-name, product, or feature of a product, peculiar to one manufacturer does not provide for full and open competition regardless of the number sources solicited. For that reason, you must not use such descriptions unless:

- The particular brand-name, product, or feature is essential to the Government's requirements, and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency's minimum needs; and
- The authority to contract without providing for full and open competition is supported by the justifications and approvals required under FAR 6.302-1.

Brand-name or equal descriptions and other purchase descriptions that permit prospective contractors to offer products other than those specifically identified by brand-name do provide for full and open competition and do not require justifications and approvals to support their.

(Continued on next page)

2.1.3 Review Requirements Documents (cont)

Content of Brand-Name-Or-Equal Purchase Descriptions

DFARS 210.004

When the brand-name-or-equal descriptions are used, all known acceptable brand names should be referenced. Prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name, as long as those products meet the needs of the Government in essentially the same manner as those referenced.

Brand-name-or-equal purchase descriptions should contain the following information to the extent available:

- Complete common generic identification of the product required.
- Model, make, or catalog for each brand-name product referenced, and the identity of the commercial catalog in which it appears.
- Name of the manufacturer, producer, or distributor of each brand-name product referenced, and address if the firm is not well known.
- When necessary to adequately describe the product required, an applicable commercial catalog description, or pertinent extracts therefrom, may be used if such description is identified in the solicitation as being that of the named manufacturer, producer, or distributor.

Take care to assure that all available information described above is provided to prospective sources to maximize competition.

Example of Problems That Can Develop: The General Accounting Office (GAO) recently reported (GAO/NSIAD-91-53) that solicitations giving only part numbers as item descriptions may be unnecessarily restricting competition. All solicitations questioned by the report required offerors to submit technical data, on both the brand-name item identified in the solicitation and any alternative product offered, so that the Government could determine whether the offered item met Government needs. However, the solicitations usually did not identify descriptive information available in the buying center on the items being solicited.

Several prospective sources indicated that they could not identify the items required, because only part numbers were provided. Providing even incomplete data to prospective offerors should be beneficial to the Government by helping to increase competition.

2.1.4 Use and Maintain Requirements Documents

Identifying Applicable Specifications and Related

Any requirements documents used in a solicitation or contract must be clearly identified to avoid any confusion about the Government's requirements.

Documents

FAR 11.201

- **Identify Federal or Military specifications.** If you cite requirements documents listed in the General Services Administration (GSA) Index of Federal Specifications, Standards and Commercial Item Descriptions, the DoD Index of Specifications and Standards (DoDISS), or other agency index, identify each document's approval date and the dates of any applicable amendments and revisions. Do not use general identification references, such as "the issue in effect on the date of the solicitation." Do not furnish the cited requirements documents with the solicitation, except when:
    - ◊ The requirements document must be furnished with the solicitation to enable prospective contractors to make a competent evaluation of the solicitation;
    - ◊ You believe that it would be impracticable for prospective contractors to obtain the documents in a reasonable time to respond to the solicitation; or
    - ◊ A prospective contractor requests a copy of a Government promulgated requirements document.

- **Identify other pertinent documents.** Clearly identify any pertinent documents not listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions or DoDISS. When you use such documents, either furnish them with the solicitation or provide specific instructions on how prospective offerors can obtain or examine such documents.

- **Assure that any necessary references to other documents are clear.** Make sure that any references made in requirements documents to other documents:
    - ◊ Are restricted to documents, or appropriate portions of documents, that apply to the acquisition;
    - ◊ Cite the extent of their applicability;
    - ◊ Do not conflict with other documents and provisions of the solicitation; and
    - ◊ Identify all applicable first tier references.

2.1.4 Use and Maintain Requirements Documents (cont)

Identifying Applicable Specifications and Related Documents (cont)

- **Assure that interested parties know where to obtain Federal and Military specifications.**
  - ◊ The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions may be purchased from the General Services Administration, Federal Supply Service Bureau, Specification Section, Suite 8100, 470 L'Enfant Plaza, SW, Washington, DC 20407, telephone (202) 755-0325/0326.
  - ◊ The DoDISS may be purchased from the Standardization Documents Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, telephone (215) 697-2569.
- **Assure that interested parties know where to obtain nongovernment standards adopted by the Government.** Interested parties may generally obtain them from the GSA Specification Section or the DoD Standardization Documents Desk those nongovernment (voluntary) standards adopted for use by Federal or Defense activities. Standards not available from these sources may be obtained from Government libraries, activities subscribing to document handling services or the organization responsible for the preparation, publication or maintenance of the standard.

Identifying the Need for Changes

FAR 11.203

Standardization documents are maintained to assure that requirements for items used across the Government are uniform. However, products available in the commercial market and the needs of the Government change over time.

As part of your market research, communicate with customers to determine how well the requirements document reflects the customer's needs. If the customer indicates that the requirements do not meet customer needs, obtain suggestions for corrective action.

Whenever practicable, you may provide affected industry an opportunity to comment on the requirements documents. If industry sources recommend changes, obtain comments from the appropriate members of the Acquisition Team before taking any action to modify requirements documents.

2.1.4 Use and Maintain Requirements Documents (cont)

Modifying Standardization Documents

FAR 11.202

Whenever you determine that Government standardization documents should be changed:

- Submit any recommended changes for standardization documents listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, to the General Services Administration, Federal Supply Service, Office of Acquisition, Washington, DC 20406.
- Submit any recommendations for changes to standardization documents listed in the DoDISS to the cognizant preparing activity.

When you cite an existing standardization document but modify it to meet agency needs, follow the guidance provided in the appropriate standardization reference -- either the Federal Standardization Manual or DoD 4120.3-M, Defense Standardization Program Policies and Procedures.

2.1.5 Acquire Other Than New Material

Introduction

Your market research may identify situations were it would be advantageous to the Government to acquire items that are not new (e.g., rebuilt items), former Government surplus property, or residual inventory. Such items may be available at a fraction of the price of new material. You must consider the best interests of the Government in deciding whether to solicit offers based on providing such items.

Contracting Officer Authorization

FAR 11.301(a)

Do not permit a contractor to provide other than new material, former Government surplus property, or residual inventory unless the contractor has obtained the appropriate contracting officer authorizations required by:

- FAR 52.211-5, New Material;
- FAR 52.211-6, Listing of Other Than New Material, Residual Inventory, and Former Government Surplus Property; or
- FAR 52.211-7, Other Than New Material, Residual Inventory, and Former Government Surplus Property, as appropriate.

Considering Authorization Requests

FAR 11.301

Allow offers of other than new material, former Government surplus property, or residual inventory unless you determine that such materials are unacceptable. As you make your determination, consider the following:

- Safety of persons or property;
- Specification and performance requirements;
- Price reasonableness; and
- Total cost to the Government (including maintenance, inspection, testing, and useful life).

When you are acquiring commercial items, you should consider the customary practice in the industry for the item being acquired. For example, in many industries it is common practice to use rebuilt parts because of the savings over the purchase of new parts. In other industries, safety and performance considerations make the use of new components essential.

2.1.5 Acquire Other Than New Material (cont)

Specifying New Material FAR 11.301(a)	When only new material is acceptable, ensure that the solicitation clearly identifies the material that must be new.
Specifying Environ-mental Products FAR 11.301(b)	Specify products, including packaging, that contain the highest practicable percentage of recovered and environmentally preferable materials, and where applicable, post-consumer material, consistent with performance requirements, availability, price reasonableness, and cost-effectiveness.
Pricing Government Surplus Property FAR 11.301(d)	When a contract calls for material to be furnished at cost, the allowable charge for former Government surplus property shall not exceed the cost at which the contractor acquired the property.

2.1.6 Consider Delivery or Performance Schedules

Introduction

FAR 12.101(a)

The time of delivery or performance is an essential contract element and must be clearly stated in solicitations and contracts. Assure that delivery or performance schedules are realistic and meet the requirements of the acquisition. Remember that unreasonably tight or difficult to attain schedules:

- Tend to restrict competition;
- Are inconsistent with small business policies; and
- May result in higher prices.

Consider Market Norms

In 1990, GAO examined inventory and contracting practices at two Government buying centers (GAO/NSIAD-90-124).

GAO found that, in most cases, buyers made no effort to match delivery schedules to market norms. Instead, buyers awarded contracts based on quotes to deliver on the date specified by the organizations' automated inventory system. Since little was known about market delivery norms, there was no reason to question the specified delivery schedule. Buyers assumed that suppliers would deliver according to the contract schedule.

The data collected by GAO do not support that assumption. GAO examiners reviewed 109 purchases of 57 supply items. They found that:

- 1 purchase (0.9%) was delivered exactly on time
- 58 purchases (53.2%) were delivered an average of 51 days late
- 50 purchases (45.9%) were delivered an average of 61 days early

2.1.6 Consider Delivery or Performance Schedules (cont)

Consider Market Norms (cont)

At these buying centers, failure to consider market norms may have had a substantial impact on competition, prices, and other acquisition costs.

- Many prospective competitors who recognized that the required delivery schedule did not provide sufficient time for production and delivery, may have been unreasonably excluded from the competition.
- Some firms may have had an unfair competitive advantage because they knew that the Government would accept less-than-agreed-to delivery.
- The Government likely paid unnecessarily high prices because of the limited competition and uninforced delivery schedules.
- Items delivered late may have caused inventory shortages or other operational delays.
- Items delivered early may have increased Government inventory holding costs.

Supply/Service Schedule Factors to Consider

FAR 11.402(a)

Consider the following factors when establishing delivery schedules for supplies or services:

- Urgency of need;
- Industry practices;
- Market conditions;
- Transportation time;
- Production time;
- Capabilities of small business concerns;
- Administrative lead time for obtaining and evaluating offers—contractor delivery should not be curtailed because of Government delays in contract award; and
- Time required for the Government to perform its contract obligations—such as delivering Government-Furnished Property.

2.1.6 Consider Delivery or Performance Schedules (cont)

Construction Schedule Factors to Consider

FAR 11.402(b)

In developing a schedule for construction projects, you must consider such factors as:

- Nature and complexity of the project;
- Construction seasons involved;
- Required completion date;
- Availability of materials and equipment;
- Capacity of contractors to perform;
- Use of multiple completion dates (e.g., a separate completion date for separable items of work).

Selecting Appropriate Method of Expressing Schedule

FAR 11.403(a)

Consider different ways of expressing delivery or performance schedules and select the one that seems most appropriate for your acquisition situation. Common methods of expressing contract delivery or performance requirements include specific:

- **Calendar dates**;
- **Time periods from a contract date** (e.g., from the date of contract award, from date of acceptance by the Government, or from the effective date of the contract);
- **Time periods from the date of receipt contract notice** by the contractor (e.g., notice of award or notice of acceptance by the Government);
- **Time period for delivery after receipt by the contractor of each individual order** under the contract (e.g., orders under indefinite delivery contracts and GSA schedules).

2.1.7 Use Liquidated Damages

Introduction

In Government contracting, a liquidated damages clause is a stipulation by the Government and contractor to a sum of money to be recovered by the Government in the event the contractor fails to meet a specified contract delivery or performance requirement. Liquidated damages are normally assessed at a daily rate for each day of delay in meeting the delivery or performance requirement. A liquidated damages clause may be used in any type of contract, but such clauses are most commonly used in construction contracts.

Deciding Whether to Use Liquidated Damages

FAR 11.502
DFARS 212.204

In some agencies, use of a liquidated damages clause may be mandatory in certain contracting situations, For example, the Department of Defense requires the use of liquidated damages in all construction contracts over $500,000.

If the use of a liquidated damages clause is not specifically required by your agency, you should only use liquidated damages when you can answer "YES" to both of the following questions:

- Is the time of contract delivery or performance so important that the Government may reasonably expect to suffer damage if the delivery or performance is delinquent?
- Would the extent or amount of such damage be difficult or impossible to ascertain?

As you decide whether to include a liquidated damages clause in the solicitation/contract, consider the probable effect of using the clause on contract pricing, competition, and the costs and difficulties of contract administration. Concern among potential offerors about the cost risk associated with liquidated damages may increase contract prices, decrease competition, and/or increase the cost/difficulty of contract administration. The cost/difficulty of contract administration may increase if the contractor attempts to claim any Government delay to contract performance to mitigate the possible assessment of liquidated damages in case contract requirements are not met on time.

2.1.7 Use Liquidated Damages

Estimating a Reasonable Rate

FAR 11.502(b)
FAR 11.503(b)

Whenever you use liquidated damages, you must calculate the rate on a case-by-case basis, based on an estimate of actual damage to the Government if the contractor does not perform on time. Assure that the rate is reasonable because a rate fixed without any reference to probable actual damages may be held to be a penalty, and therefore unenforceable.

If a liquidated damages clause is used in a construction contract, the contract should identify a daily rate for the assessment of liquidated damages. As a minimum, the rate should cover the estimated cost of inspection and superintendence for each day of delay in contract completion. Whenever the Government will suffer other specific losses due to the failure of the contractor to complete the work on time, the rate should also include an amount to cover those losses. Examples of specific losses include the:

- Cost of substitute facilities;
- Rental of buildings and/or equipment; or
- Continued payment of quarters allowances.

FAR 11.503(c)

Usually, a single liquidated damages rate (e.g., $500 per day) is used from the date of contractually required delivery/performance until the contractor actually delivers or the contract is terminated. However, the probable damage to the Government may not follow that linear pattern.

- If appropriate to reflect probable damages to the Government, you may develop two or more incremental rates which provide for a declining rate assessment as the delinquency continues.
- You may also include an overall maximum dollar amount or period of time, or both, during which liquidated damages may be assessed, to ensure that the result is not an unreasonable assessment of liquidated damages.

2.1.8 Use Variation in Quantity

Introduction

FAR 11.701(a)

As part of your market research, you should evaluate the market use of variation in quantity clauses for the item(s) you are acquiring. In particular, you should consider possible variations in quantity for fixed-price supply contracts, service contracts that involve the furnishing of supplies, and unit-priced construction contracts.

Reasonable Variation for Supplies

FAR 11.701 (a) & (b)

When you are preparing a fixed-price solicitation for a supply contract or a service contract that involves the furnishing of supplies, you must insert FAR 52.211-16, Variation in Quantity. Using this clause, you may provide for no variation in quantity, or you may provide for accepting a quantity that is greater than the quantity called for in the contract, a quantity that is less than the quantity called for in the contract, or both, as long as the variation is caused by conditions of loading, shipping, packing, or by allowances in manufacturing processes.

FAR 52.211-16

In the solicitation, describe the acceptable plus or minus variation as a percentage of a specific quantity of items.

- Base the percentage(s) that you assign on your market research of the items and industry involved.
  - ◊ Tailor the plus and minus variation percentages to the item and industry involved -- do not use a standard or usual variation that you apply in all circumstances.
  - ◊ Neither variation percentage should be larger than necessary to afford a contractor reasonable protection.
  - ◊ Neither the plus or minus variation percentage shall exceed 10 percent.
  - ◊ Either variation percentage could be as small a zero.
  - ◊ If you allow both a plus and a minus variation, the plus percentage and the minus percentages can be different (e.g., plus 10 percent and minus 5 percent).
- Carefully determine which quantity or quantities will be subject to the variation. Possibilities include:
  - ◊ The total contract quantity,
  - ◊ A particular item (e.g., Item 1 only),
  - ◊ Each quantity specified in the delivery schedule,
  - ◊ Total item quantities for each destination, or
  - ◊ Total quantity of each item without regard to destination.

2.1.8 Use Variation in Quantity (cont)

Delivery of Excess Supplies

FAR 11.701(c)

You are preparing a solicitation for a fixed-price supply contract and you are concerned that the contractor may deliver more than the quantity specified in the contract (including any allowable variation in quantity)? You know that delivery of even a small quantity of excess items will result in unnecessary administrative cost to the Government, because Government personnel will have to determine and manage the disposition of the excess supplies. What action can you take to protect the Government?

You can insert FAR 52,211-17, Delivery of Excess Quantities, into the solicitation/contract. That clause provides that:

- Excess quantities of items totaling up to $250 in value may be retained by the Government without compensating the contractor.
- Excess quantities of items totaling , $250 in value may, at the Government's option, be either returned at the contractor's expense or retained and paid for at the contract unit price.

Reasonable Variation for Construction

FAR 11.702

Whenever you are preparing a solicitation for a fixed-price construction contact that will authorize a variation in the estimated quantity of unit-priced items (e.g., feet of road paving), you must insert FAR 52.211-18, Variation in Estimated Quantity, Under this clause:

- When the actual quantity of a unit-priced item varies more than 15 percent above or below the estimated quantity, either the contracting officer or the contractor can demand an equitable adjustment in the contract price. The equitable adjustment must be based upon any increase or decrease in costs due solely to variation above 115 percent or below 85 percent of the estimated quantity.
- If a quantity variation causes an increase in the time necessary for contract completion, the contractor may request an extension of time.

2.1.9 Pursue Restrictive Requirement Relief

Introduction	Improving Government requirements documents to increase competition requires responsible and effective management at all levels. The effort is not limited to contracting and requirements management activities, but must extend to all members of the Acquisition Team.
Analysis	Typically, you must work closely with other Acquisition Team members to analyze the: • User's real needs • Current product requirements • Products available in the commercial market • Real restrictions that prevent the use of commercial products
Improving Communi-cations	Effective communications are essential. Acquisition Team members must communicate effectively with each other as well as with top management in the department or agency. The objectives and benefits of pursuing restrictive requirement relief must be communicated to everyone involved. Any effort to eliminate restrictive requirements must have top management support. Top management can communicate its support by establishing an effective monitoring system—using the inspectors general, internal audit, or other groups. Monitors should periodically evaluate whether managers at all levels are taking an active and positive approach to eliminating restrictive requirements, increasing competition, and increasing the use of commercial and nondevelopmental items.
Key Acquisition Team Members	Key Acquisition Team members involved in the communications process are: • Users—key source of information on the real needs of the Government • Requirement Managers—key decision makers • Suppliers—key information source in market research and analysis • Contracting Personnel—responsible for the effectiveness of the acquisition decision

2.1.9 Pursue Relief from Restrictive Requirements (cont)

Effective Communi-cation System	The table below provides an overview of the communication process necessary to eliminate restrictive requirements, and the key Acquisition Team members involved.

EFFECTIVE COMMUNICATION		
Personnel	Communicating With..	Communicating About..
Users	• Requirements Managers • Contracting Personnel	• Adequacy of current specifications in communicating the user's minimum needs. • Current product capabilities. • Current product failures and deficiencies. • Suggestions for improvement and corrective action.
Requirements Managers	• Users • Contracting Personnel	• Satisfaction of user needs with current products. • Satisfaction of user needs by less expensive commercial products. • Tailoring of mandatory requirements documents to assure identification of the minimum Government needs.
Suppliers	• Users • Requirements Managers	• The industry: - Business practices in sales and distribution. - Production capacity. - Packaging and preservation practices. • Commercial products available to satisfy user needs. • Commercial product quality practices. • Commercial product support.
Contracting Personnel	• Users • Requirements Managers • Suppliers	• Restrictive requirements. • Provision of commercial market information to users and requirements managers. • Analysis of competitive conditions in the market. • Communicating Government requirements to suppliers in a way that maximizes competition.

2.1.9 Pursue Relief from Restrictive Requirements (cont)

Catalyst for Action

You may also be required to serve as a forceful catalyst for action. Ideally, the Acquisition Team, with strong management support and encouragement, can increase competition, increase the use of commercial and nondevelopmental items, improve quality, and reduce prices. However, there may be situations where there are uncertainties about the ability of modified Federal Specifications and Standards, commercial purchase descriptions, or commercial voluntary specifications or standards, to meet the minimum needs of the Government.

Situation 1: Two potential suppliers assure you that their commercial products will "do the job just as well as the product specified by Federal Specifications, and save the Government at least 15 percent." The user and the requirements manager say that "the commercial products may work" but they are "not sure of the possible long-term effects on safety." They feel that, "we should stick with the product we know."

Situation 2: You have a brand-name request for copy paper. Technical personnel certify that only the brand-name can meet Government needs. Suppliers of other copy papers indicate that their brands are "as good as the requested paper in all important respects and will save the Government at least 25 percent." Users and the requirements manager still maintain that "the brand-name paper is the only brand that does not jam under prevalent high-humidity conditions."

What should the contracting officer do?

In both the situations above, technical personnel have evaluated the commercial products and have rejected them, and it appears that the contracting officer's job is done. However, FAR requires that you:

FAR 11.02 (a)(1)(ii)

> "Only include restrictive provisions or conditions to the extent necessary to satisfy the minimum needs of the agency or as authorized by law."

2.1.9 Pursue Relief from Restrictive Requirements (cont)

Catalyst for Action (cont)

In both situations, it appears that some suppliers are being unreasonably excluded from the competition. The Government may be paying for more than it needs at prices much higher than necessary. In addition, the rejected potential suppliers may protest exclusion from any future contract actions.

As a contracting officer, you should continue to ask questions to make sure that you get the correct answer about the true agency requirements. There are no "dumb questions" in contracting, except those that are never asked!

Action Support

Whom should the contracting officer ask?

Ideally, you should work with concerned members of the Acquisition Team to raise questions about unnecessarily restrictive requirements to higher authority within the agency. In the case of a Government specification item, you should raise the question to the authority responsible for the specification. If other members of the Acquisition Team refuse to question requirements that appear to be unnecessarily restrictive, you, as the contracting officer, should raise questions to higher technical authority through contracting channels.

Whether you act alone or with the Team to question requirements, the ultimate answer might be to accept or to reject the proposed alternatives. Regardless of the answer, you have fulfilled the responsibility of pursuing all actions necessary to ensure effective contracting. You have also formed the basis for a broad Government position on the answer. If potential suppliers do protest, no one will wonder why you did not ask the question earlier.

2.2 Improving Business Terms and Conditions
Overview

In this section

This section covers the following strategies for selecting clauses and provisions for the solicitation to maximize price competition :

TOPIC	SEE PAGE
2.2.1 Base the Contract Type on Risk Analysis	2-40
2.2.2 Review Applicability of Socioeconomic Requirements	2-45
2.2.3 Match Payment and Finance Terms to Market Conditions	2-47
2.2.4 Furnish Government Property	2-54
2.2.5 Minimize Cost of Warranty Requirements	2-57
2.2.6 Optimize Price/Technical Tradeoffs	2-59

2.2.1 Base the Contract Type on Risk Analysis

Introduction

The selection of contract type can have a significant effect on both competition and contract price.

Two Contract Categories

Most contract types fit into one of two categories:

- Fixed-Price
- Cost-Reimbursement

The biggest difference between the two is the assignment of risk.

In **fixed-price contracts**, the contractor is required to deliver the product specified.

In **cost-reimbursement contracts**, the contract is required to deliver a "best effort" to provide the specified product. All allowable costs must be reimbursed, regardless of delivery, up to the level specified in the Schedule as the total estimated cost.

Risk, Contract Type, and Price

Analysis of the risk inherent in the contracting situation is the key element in the selection of an appropriate contract type. The relationship between risk, contract type, and price can be demonstrated by the following examples.

Examples:

- Selection of a fixed-price contract when the risks are beyond the contractor's control, as in many development contracts, will increase price and reduce competition.

- Selection of a cost-reimbursement contract when the risks are well within the contractor's control, as in most production contracts, will reduce the contractor's motivation to control costs.

Commercial Items

FAR 16.201

When acquiring commercial items, you are limited to using either a firm fixed-price (FFP) or fixed-price with economic price adjustment (FPEPA).

2.2.1 Base the Contract Type on Risk Analysis (cont)

Major Types The table below presents a comparison of the major contract types.

	COMPARISON OF MAJOR TYPES OF CONTRACTS		
	FIRM FIXED-PRICE (FFP)	*INDEFINITE DELIVERY (ID)*	*FIXED PRICE ECON. PRICE ADJUSTMENT (FPEPA)*
Principal Risk to Be Mitigated	Costs of performance can be estimated with a high degree of confidence. Thus, the contractor assumes the risk.	At time of award, delivery requirements are not certain	Market prices for required labor and/or materials are likely to be highly unstable over the life of contract.
Use When:	• The requirement is well-defined. • Contractors are experienced in meeting it. • Market conditions are stable. • Financial risks are otherwise insignificant.	**Definite Quantity:** The required quantity is known and funded at the time of award. **Indefinite Quantity:** The minimum quantity required is known and funded at award. **Requirements:** No commitment on quantity is possible at award.	• The market prices at risk are severable and significant. • The risk stems from industry wide contingencies beyond the contractor's control. • The dollars at risk outweigh the administrative burdens of an FPEPA.
Elements	Firm fixed price for each line item or one or more groupings of line items.	• "Per unit" price. • Performance period. • Ordering activities and delivery points. • Maximum or minimum limit (if any) on each order. • Extent of each party's obligation on quantity.	A fixed price, ceiling on upward adjustment, and a formula for adjusting the price up or down based on: • Established prices. • Actual costs of the labor or materials. • Labor or material indices.
Contractor Is Obliged To:	Provide an acceptable deliverable at the time, place, and price specified in the contract.	Provide acceptable deliverables at the time and place specified in each order at the per unit price, within any ordering limits established by the contract.	Provide an acceptable deliverable at the time and place specified in the contract at the adjusted price.
Contractor Incentive *(other than maximizing Goodwill)*[1]	Generally realizes an additional dollar of profit for every dollar that costs are reduced.	Incentive will depend on the contract pricing arrangement.	Generally realizes an additional dollar of profit for every dollar that costs are reduced.
A Typical Application	Commercial supplies and services.	Long-term contracts for commercial supplies and support services.	Long-term contracts for commercial supplies during a period of high inflation.
Principal Limitations In FAR Parts 16, 32, 35, and 52	Generally not appropriate for R&D. Firm fixed-price level of effort contract may be used for R&D if agreement can be reached on effort required at < $100,000.	May use any appropriate cost or pricing arrangement that complies with FAR Part 16. Multiple awards preferred for indefinite quantity contract product coverage. Single award required for requirements contract product coverage.	Must be justified.
Variants	Firm Fixed-Price Level of Effort	Definite quantity, indefinite quantity requirements.	

2.2.1 Base the Contract Type on Risk Analysis (cont)

Major Types of Contracts (cont)

Continuation of the table presenting a comparison of the major contract types.

Comparison of Major Types of Contracts	Fixed Price Award Fee (FPAF)	FP Prospective Redeterminable (FPPRD)	Fixed-Price Incentive (FPI)
Principal Risk to Be Mitigated	Acceptance criteria are inherently judgmental, with a corresponding risk that the end user will not be fully satisfied.	Costs of performance can be estimated with confidence only for the first year of performance.	Labor or material requirements for work are moderately uncertain. Hence, the Government assumes part of the risk.
Use When:	Judgmental standards can be fairly applied.[2] The potential fee is large enough to both: • Provide a meaningful incentive. • Justify the administrative burdens of an FPAF.	The Government needs a firm commitment from the contractor to deliver the supplies or services during subsequent years. The dollars at risk outweigh the administrative burdens of an FPPRD.	Ceiling price can be established that covers the most probable risks inherent in the nature of the work. The proposed profit sharing formula would motivate the contractor to control costs and meet other objectives.
Elements	• A firm fixed-price • Fee pool • Standards for evaluating performance. • Criteria for determining a "fee" based on performance against the standards.[2]	• Fixed price for the first period. • Proposed subsequent periods (at least 12 months apart). • Timetable for pricing the next period(s).	• Ceiling price • Target cost • Target profit • Delivery, quality, and/or other performance targets (optional) • Ratio for adjusting profit based on actual costs and/or performance.
Contractor Is Obliged To:	Perform at the time, place, and the price fixed in the contract.	Provide acceptable deliverables at the time and place specified in the contract at the price established for each period.	Provide an acceptable deliverable at the time and place specified in the contract, at or below the ceiling price..
Contractor Incentive *(other than maximizing Good- will)*[1]	Generally realizes an additional dollar of profit for every dollar that costs are reduced; earns an additional fee for satisfying the performance standards.	For the period of performance, realizes an additional dollar of profit for every dollar that costs are reduced.	Realizes a higher profit by completing the work below the ceiling price and/or by meeting objective performance targets.
Principal Limitations In FAR Parts 16, 32, 35, and 52	Must be negotiated.	Must be negotiated. Contractor must have an adequate accounting system that supports the pricing periods. Prompt redeterminations.	Must be justified. Must be negotiated. Contractor must have an adequate accounting system. Targets must be supported by the cost data.
Variants		Retroactive Redetermination.	Firm or Successive Targets.

2.2.1 Base the Contract Type on Risk Analysis (cont)

Major Types of Contracts (cont)

Continuation of the table presenting a comparison of the major contract types.

	COMPARISON OF MAJOR TYPES OF CONTRACTS		
	COST-PLUS-FIXED-FEE (CPFF)	*COST-PLUS-INCENTIVE-FEE (CPIF)*	*COST-PLUS-AWARD-FEE (CPAF)*
Principal Risk to Be Mitigated	Labor hours, labor mix, and/or material requirements (among other things) necessary to perform are highly uncertain and speculative. Hence, the Government assumes the risks inherent in the contract, benefiting if the actual cost is lower than the expected cost; losing if the work cannot be completed within the expected cost of performance. Some cost type contracts include procedures for raising or lowering the fee as an incentive for the contractor to perform at lower cost and/or attain performance goals.		
Use When:	Formulas relating fee to performance (e.g. to actual costs) would be unworkable or of marginal utility.	Objective relationship can be established between the fee and such performance measures as actual costs, delivery dates, performance benchmarks, and the like.	Objective incentive targets are not feasible for critical aspects of performance. Judgmental standards can be fairly applied.[2] Potential fee would provide a meaningful incentive.
Elements	• Estimated cost. • A fixed fee.	• Target cost. • Performance targets (optional). • Minimum, maximum, and target fee. • Ratio for adjusting fee based on actual costs and/or performance.	• Estimated cost. • Standards for evaluating performance. • Base and maximum fees. • Procedures for adjusting "fee" based on performance against the standards.[2]
Contractor Is Obliged To:	Make a good faith effort to meet the Government's needs within the estimated cost in the Schedule.		
Contractor Incentive *(other than maximizing Goodwill)*[1]	Realizes a higher rate of return (i.e., fee divided by total cost) as total cost decreases.[3]	Realizes a higher fee by completing the work at a lower cost and/or by meeting other objective performance targets.	Realizes a higher fee by meeting judgmental performance standards.
A Typical Application	Research study.	Research and development of the prototype for a major system.	Large scale research study.
Principal Limitation In FAR Parts 16, 32, 35, and 52	The contractor must have an adequate accounting system. The Government must exercise surveillance during performance to ensure use of efficient methods and cost controls. Must be negotiated. Must be justified. Statutory and regulatory limits on the fees that may be negotiated. Must include the applicable "Limitation of Cost" clause at FAR 52.232-20 through 23.		
Variants	Completion or Term.		

2.2.1 Base the Contract Type on Risk Analysis (cont)

Major Types of Contracts (cont)

Continuation of the table presenting a comparison of the major contract types.

Comparison of Major Types of Contracts	Cost or Cost Sharing (C/CS)	Time & Materials (T&M)
Principal Risk to Be Mitigated	Labor hours, labor mix, and/or material requirements (among other things) necessary to perform are highly uncertain and speculative. Hence, the Government assumes the risks inherent in the contract, benefiting if the actual cost is lower than the expected cost; losing if the work cannot be completed within the expected cost of performance.	
Use When:	• The contractor expects substantial compensating benefits for absorbing part of the costs and/or foregoing fee, or • The vendor is a nonprofit entity.	Hourly labor rates can be firmly defined at contract award but hours required to complete the required task cannot.
Elements	• Estimated cost. • If cost sharing, agreement on the Government's share of the cost. • No fee.	• Ceiling price. • Per hour labor rate that also covers overhead and profit. • Provisions for reimbursing direct material costs plus material handling cost.
Contractor Is Obliged To:	Make a good faith effort to meet the Government's needs within the estimated cost in the Schedule.	Make a good faith effort to meet the Government's needs within the "ceiling price."
Contractor Incentive *(other than maximizing Goodwill)*[1]	Cost sharing shares the cost of providing a deliverable of mutual benefit.	Fixed rate and flexible hours to perform a task with unknown elements.
A Typical Application	Joint research with educational institutions.	Emergency repairs to heating plants and aircraft engines.
Principal Limitations In FAR Parts 16, 32, 35, and 52	The contractor must have an adequate accounting system. The Government must exercise surveillance during performance to ensure use of efficient methods and cost controls. Must be negotiated. Must be justified. Must include the applicable "Limitation of Cost" clause at FAR 52.232-20 through 23.	Contracting officer must determine in writing that no other contract type is suitable. Labor rate must be negotiated and justified. The Government must exercise appropriate surveillance to ensure efficient performance. Contract must include a ceiling price.
Variants		Labor Hour

1 Goodwill being the value of the name, reputation, location and other intangible assets of a firm.

2 Performance is evaluated by an Award Fee Panel with fee determined by a Fee Determining Official. Fee determinations are not subject to contract disputes provisions.

3 The CPFF contract is commonly used in situations where the Government is more interested in technical excellence than cost control. However, you must be aware that higher cost does not necessarily equal technical excellence. Contractors may attempt to shift unnecessary resources to CPFF contracts to control costs on other contracts.

2.2.2 Review Applicability of Socioeconomic Requirements

Introduction

Socioeconomic programs are established to achieve national social and economic goals. Several socioeconomic programs can affect your ability to solicit potential sources. The overall effect of these programs on competition and contract pricing must be considered in every contracting action.

Consider Small Business Program Effects

The single most important socioeconomic program affecting competition is the small business program. The following table summarizes the three primary elements of the program related to mandatory sources. Particularly notice the situations where you should question the various requirements that limit competition.

	SOCIOECONOMIC SOURCING REQUIREMENTS	QUESTION WHEN...
FAR 19.502-2(a)	**Total Small Business Set-Aside** An acquisition must be reserved for exclusive participation by small business when there is a reasonable expectation that the requirements can be met by small business.	There is a reasonable expectation that: • Offers WILL NOT be obtained from at least two responsible small business concerns (The two concerns must offer products from different small business concerns unless the requirement is waived by SBA.) OR THAT • Award(s) WILL NOT be made at fair market prices.
FAR 19.502-3	**Partial Small Business Set-Aside** A portion of the acquisition is reserved for participation by small business when a total set-aside is not appropriate and the requirement is severable into two or more economic lots.	There is a reasonable expectation that ONLY two firms (one large and one small) with performance capability will respond to the solicitation.
FAR 19.806 FAR 19.807	**8(a) Program** Under Section 8(a) of the Small Business Act, contracts may be awarded to the Small Business Administration (SBA) for performance by eligible "8(a) firms." The SBA subcontracts may be awarded on a non-competitive or competitive basis.	There is a reasonable expectation that the contract price will exceed a fair market price. The negotiated contract price and estimate of a fair market price are subject to the concurrence of the SBA. (FAR 19.806 and FAR 19.807).

2.2.2 Review Applicability of Socioeconomic Requirements (cont)

Consider Effects of Other Mandatory Source Programs

There are a number of other socioeconomic programs that limit the sources that you can consider for a particular acquisition. The three most important programs are considered in the following table. Again notice the situations where you should question the various requirements that limit competition.

	MANDATORY SOURCES	
	Socioeconomic Sourcing Requirements	**Question when the price of the required source exceeds open market prices.**
FAR 8.6	**Federal Prison Industries (FPI) or UNICOR** Mandatory source for supplies of the classes listed in the "Schedule of Products Made in Federal Penal and Correctional Institutions."	See FAR 8.604(c) on referring FPI prices that you believe exceed the market price to the cognizant FPI product division for resolution.
FAR 8.7	**Committee for Purchase from the Blind and Other Severely Handicapped** Mandatory source for supplies and services identified in the "Procurement List."	See FAR 8.707(f) on contacting the Committee at any time to make recommendations on price revision.
FAR 8.2	**William Langer Plant, Rolla, ND** Mandatory source for jeweled bearings and related items must be acquired from the plant or from other domestic manufacturers.	See FAR 8.203-3 on situations where relief may be granted from mandatory requirements in the best interest of the Government.

2.2.3 Match Payment and Finance Terms to Market Conditions

Introduction

Under cost-reimbursement contracts, contractors are typically reimbursed for costs incurred on a monthly basis. Under fixed-price contracts, payment is made in a lump sum at contract completion unless other financing terms are provided for in the contract. Sometimes, you can attract a greater level of competition and lower-priced offers by providing financing, relative to the costs of extending such financing.

Contractor Financing

Requiring contractors to fund the entire contract may severely limit competition, particularly with large contracts and long performance periods. Any firm that does submit an offer will probably offer a higher price to cover the cost of working capital. Recognizing the potential effects of required contractor funding on competition and pricing, you may want to consider other financial terms.

However, there are negative aspects to Government funding. Government funds are not free. The Government must also pay interest on borrowed capital. In addition, when the Government provides working capital support, the contractor has both the funds and the product. In the event of contractor default or bankruptcy, the Government may lose both the product and the funds.

Simplified Acquisition Financing

FAR 32.003

Unless agency regulations otherwise permit, you shall not provide contract financing for purchases made under the authority of FAR Part 13.

2.2.3 Match Payment and Finance Terms to Market Conditions (cont)

Customary and Unusual Financing

Financing methods can be divided is several different ways. As you make financing decisions, the most basic division is into customary and unusual financing methods.

FAR 32.001
FAR 32.113

Customary contract financing is financing deemed by your agency to be routinely available for fixed-price contracts. Most customary contract financing arrangements should be available for your use without specific reviews or approvals by higher management.

Unusual contract financing is financing not deemed to be customary contract financing by your agency. Unusual contract financing is financing that is legal and proper under applicable laws, but your agency has not authorized you to use it without specific reviews or approvals by higher management.

2.2.3 Match Payment and Finance Terms to Market Conditions (cont)

Customary Financing Methods for Non-Commercial Items

The following table outlines customary methods for financing non-commercial items in accordance with FAR Part 32 and agency regulations:

	Financing of...	Description	Requirement for Use
	CUSTOMARY FINANCING METHODS FOR NON-COMMERCIAL ITEMS		
FAR 32.113(a)	Shipbuilding, or ship conversion, alteration, or repair with progress payments based on a percentage or stage of completion	Progress payments are based on the stage or percentage of completion.	Use in accordance with agency guidance.
FAR 32.103 FAR 32.111 FAR 32.113(b)	Construction or architect-engineer services	Progress payments are based on the stage or percentage of completion. Up to 10 percent of the progress payment may be withheld if progress is not satisfactory during any payment period.	Mandatory for construction contracts and architect-engineer contracts.
FAR 32.501-1 FAR 32.113(c) FAR 32.113(d)	Supplies or services awarded under sealed bidding, competitive negotiation, or sole-source negotiation, using progress payments based on costs.	Payments are made based on costs incurred as work progresses. Payments may be customary or unusual. The customary rates for large and small business are established in FAR 32.501-1.	Customary progress payments may be included when the contract exceeds minimum dollar amounts, first deliveries will not be made for a substantial time after work begins, and there will be performance expenditures prior to delivery.

Chart continued on next page

2.2.3 Match Payment and Finance Terms to Market Conditions (cont)

Customary Financing Methods for Non-Commercial Items (cont)

The following table continues the outline of the customary methods for financing non-commercial items in accordance with FAR Part 32 and agency regulations:

	Customary Financing Methods for Non-Commercial Items		
	Financing of...	**Description**	**Requirement for Use**
FAR 32.113(d) FAR 32.1003 FAR 32.1004	Supplies or services awarded under a sole-source acquisition, through performance-based payments (Do not use performance-based payments in with progress payments based on cost).	Performance payments can be based on a single item or the entire contract. Terms must include: • Performance base. • Performance based finance amount. • Procedures for multiple appropriations (if applicable) • Procedures for liquidating finance payments.	Progress payments preferred over progress payments when practical. Performance payment requires: • Agreement with contractor on performance-based payment terms. • Definitized fixed-price contract. • Contract does not provide for other methods of financing except advance payments and guaranteed loans.
FAR 32.113(e) FAR 32.402	Supplies or services through advance payments	Advances of money to a contractor before, in anticipation of, and for the purpose of complete performance under one or more contracts.	Advance payments are the least preferred method of contracting and should not be authorized if other types of financing are reasonably available. May be used only when statutory requirements and standards are met..

Chart continued on next page

2.2.3 Match Payment and Finance Terms to Market Conditions (cont)

Customary Financing Methods for Non-Commercial Items (cont)

The following table continues the outline of the customary methods for financing non-commercial items in accordance with FAR Part 32 and agency regulations:

FAR 32.113(f)
FAR 32.304-2

FAR 32.113(g)
FAR 32.1003(c)

Customary Financing Methods for Non-Commercial Items

Financing of...	Description	Requirement for Use
Supplies or services through guaranteed loans	Guarantees are made by Federal Reserve Banks to enable contractors to obtain financing from private sources under national defense contracts for supplies or services.	Annual maximums for guarantees set by Congress. Contractors apply through the Federal Reserve Bank. Loan approval requires a Certificate of Eligibility prepared by the contracting officer considering FAR requirements.
Supplies or services through any appropriate combination of advance payments, guaranteed loans, and either performance-based payments or progress payments (but not both)	Any combination of these financing methods can be used as long as performance-based payments and progress payments are not used together on the same contract.	The requirements outlined in the blocks above for each type of payment considered for combination apply here.

2.2.3 Match Payment and Finance Terms to Market Conditions (cont)

Circumstances for Financing Commercial Items

In some markets, commercial buyers commonly provide contract financing. You may include appropriate financing terms in contracts for commercial purchases when doing so will be in the best interest of the Government.

FAR 32.202-1

Specifically, you may use commercial interim payments and commercial advance payments when the following conditions are met:

- The contract item financed is a commercial supply or service;
- The contract price exceeds the simplified acquisition threshold in FAR Part 13;
- You determine that it is appropriate or customary in the commercial marketplace to make financing payments for the item;
- This form of contract financing is in the best interest of the Government;
- You obtain adequate security to protect the Government from financial loss;
- Prior to any performance of work under the contract, the aggregate of commercial advance payments shall not exceed 15 percent of the contract price;
- You award the contract on the basis of competitive procedures or, if only one offer is solicited, adequate consideration is obtained (based on the time value of the additional financing to be provided) if the financing is expected to be substantially more advantageous to the offeror than the offeror's normal method of customer financing; and
- You obtain concurrence from the payment office concerning liquidation provisions when required.

2.2.3 Match Payment and Finance Terms to Market Conditions (cont)

Customary Financing Methods

The following table outlines customary commercial methods for contract financing in accordance with FAR Part 32 and agency regulations:

CUSTOMARY FINANCING METHODS FOR COMMERCIAL ITEMS		
Financing Method	**Description**	**Special Considerations**
Commercial advance payments	Payments made before the performance of any work under the contract.	Aggregate of payments shall not exceed 15 percent of the contract price. Payments are not subject to the requirements covering advance payment for non-commercial items.
Commercial interim payments	Payments made to the contractor after some work has been done, but before the item is delivered.	Includes all payments that are not advance payments or delivery payments.

FAR 32.202-2

FAR 32.202-2

2.2.4 Furnish Government Property

Introduction

Government-furnished property can be used in several ways to encourage competition and assure overall price reasonableness.

Description

The term **property** includes facilities, material, special tooling, special test equipment, and agency peculiar property. Different types of property can be used to affect competition and pricing

Overview of Government Property

The table below provides an overview of the various types of Government property and how each type can be used to affect competition and pricing.

FAR 45.302

FAR 45.301

FURNISHING GOVERNMENT PROPERTY		
Type of Property	**Definition**	**Competition and Pricing Considerations**
Facilities	Plant equipment and real property for production, maintenance, research, or testing furnished as Government facilities under situa-tions identified in FAR 45.302.	Making facilities avail-able can significantly increase competition for major production efforts, while eliminating the need for duplicative investment by competitors.
Material	Property that may be incorporated into or attached to a deliverable end item or that may be consumed or expended in performing a contract. It includes assemblies, compon-ents, parts, raw and processed materials, and small tools and supplies that may be consumed in normal use in performing a contract. (FAR 45.301)	Providing Government material can enhance competition in several situations. Breakout of key components can in-crease competition and reduce component prices. Furnishing proprietary components can increase effective competition on larger systems.

2.2.4 Furnish Government Property (cont)

Overview of Government Property (cont)

Continuation of the table providing an overview of the various types of Government property and how each type can be used to affect competition and pricing.

FAR 45.101

FURNISHING GOVERNMENT PROPERTY		
Type of Property	**Definition**	**Competition and Pricing Considerations**
Special Tooling	Jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, components of these, all items, and replacement of these items, which are of such specialized nature that, without substantial modification, or alterations, their use is limited to the development or production of particular supplies or parts thereof, or to particular services. It does not include material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items.	Government provision of special tooling increases competition by reducing the need for investment that can only be used on one contract or project. Government ownership and right to move tooling limit producer ability to obtain a lock on the competition because of unique tooling capacity.
Special Test Equipment	Single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment including standard or general purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes.	Like special tooling, Government provision of special test equipment increases competition by reducing the need for investment that can only be used on one contract or project. Government ownership and right to move test equipment limit producer ability to obtain a lock on the competition because of unique tooling capacity.

2.2.5 Consider Warranty Requirements

Introduction

FAR 46.701
FAR 46.702

As used in this Section, a warranty is a promise or affirmation given by a contractor to the Government regarding the nature, usefulness, or condition of the supplies, or performance of services furnished under a contract.

The principal purposes of a warranty in a Government contract are to:

- Delineate the rights and obligations of the contractor and the Government for defective work.
- Foster quality performance.

Commercial Item Warranties

Take advantage of commercial warranties (including extended warranties, where appropriate and in the Government's best interests) offered by the contractor for the repair and replacement of commercial items.

FAR 46.709

In solicitations for commercial items, require offerors to offer the Government at least the same warranty terms, including offers of extended warranties, offered to the general public in customary commercial practice. You may specify minimum warranty terms, such as minimum duration, appropriate for the Government's intended use of the item.

- Assure that any express warranty the Government intends to rely upon meets the needs of the Government. Analyze any commercial warranty to determine if--
  - ◊ The warranty is adequate to protect the needs of the Government (e.g., items covered by the warranty and length of warranty);
  - ◊ The terms allow the Government effective postaward administration of the warranty; and
  - ◊ The warranty is cost-effective.
- In some markets, customary commercial practice may exclude or limit the implied warranties contained in the Government contract terms and conditions for commercial contracts. In such cases, ensure that the express warranty provides for the repair or replacement of defective items discovered within a reasonable period of time after acceptance.
- Include express warranties in the contract by addendum.

2.2.5 Consider Warranty Requirements

Use of Other Warranties

Warranties generally are not mandatory. Use must be approved in accordance with agency procedures. In determining whether a warranty

FAR 46.703
FAR 46.704

is appropriate, you must consider the:

- Nature and use of the supplies or services;
- Warranty cost including contractor charges and the cost of Government enforcement and administration;
- Government's ability to administer and enforce the warranty;
- Customary trade practice; and
- Reductions in the cost of Government contract quality assurance

---

Effect of Warranty on Competition and Pricing

By agreeing to a warranty, contractors accept the risk of deferred liability. That acceptance of risk has associated costs, and contractors unwilling to accept that risk will drop from the competition. Others may increase their price to compensate for the risk.

Before you include a warranty provision in a solicitation, you must evaluate the benefits of the warranty against the effect on competition and price. To do that, you must understand the relationship between warranty requirements, competition, price, the nature of the product, and trade practice. Warranty requirements that are unreasonable, given the nature of the product, will reduce competition and increase price. Requirements which significantly exceed trade practice will reduce competition and increase price.

Control Warranty Costs

Work with the requiring activity to identify and eliminate warranty requirements that are not in the best interest of the Government. In your analysis, consider the following guidelines:

- For commercial items, use commercial rather than Government-unique warranties.
- For non-commercial items, tailor warranty requirements to mirror existing trade practices.
- When a Government-unique warranty is required, solicit the warranty as a separately priced line item, which the Government may or may not exercise.
- If you are unsure about the benefits of an extended warranty, solicit offerors on the extended warranty as a separately priced option (especially for distant outyears).

2.2.6 Optimize Price/Technical Trade-Offs

Technical Factors that Can Reduce Competition Introduction

The factors already considered in this chapter have the greatest effect on competition and contract price. There are, however, many other technical and business factors that can reduce competition and increase prices. These include:

- Security Requirements
- Payment Provisions That Increase Contractor Investment
- Packaging Requirements That Require Survival Under Extreme Conditions
- Unclear Instructions, Certifications, and Notices to Bidders/Offerors
- Unclear Source Selection Criteria
- Conflicting and Restrictive General Contract Clauses

Technical Evaluation Factors and Price

Technical evaluation factors invite offerors to submit higher prices as the tradeoff for a technically superior offer. Key questions to ask regarding proposed technical evaluation factors:

- Will the technical evaluation factor unnecessarily force the acquisition into a higher-priced market segment?
- Will the technical factor constructively amend the specifications to require more than the Government's actual minimum needs?
- Given the likely effect on contract price, is the factor truly necessary to minimize the technical or business risks inherent in the contract requirements?
- Will use of the technical factor likely result in a "greater value" for the taxpayer?

2.3 Publicizing The Acquisition
Overview

Introduction

Publicizing the contract action is one of the most important considerations in maximizing competition. If the solicitation never gets into the hands of potential offerors, competition cannot occur.

As you decide how to publicize the buy, consider the potential effect on competition and contract price. If you can obtain dozens of competitive offers through a notice in the Commerce Business Daily (CBD), you probably do not need to be too concerned about more aggressive means of publicizing the buy. However, if the CBD notice is not likely to reach the strongest competitors, select the method of publicizing most likely to reach them.

As you publicize the buy, remember to allow enough time to receive requests for the solicitation. Of course you must also allow enough time after the solicitation is issued for firms to prepare appropriate offers.

In This Section

This section covers the following issues:

- Notice in the Contracting Office
- Commerce Business Daily (CBD)
- Handouts
- Notices to Trade Associations
- Announcements in Mass Media Without Cost
- Federal Acquisition Contracting Network (FACNET)
- Electronic Bulletin Boards
- Paid Advertisements

2.3.1 Strategies For Publicizing The Acquisition

Methods of Publicizing the Buy

The following table presents a variety of different methods for publicizing an acquisition buy and situations where the method can provide the most useful results in increasing competition.

	Method of Publicizing	Description	Situations for Use
FAR 5.101	Posting a Notice in the Contracting Office	An unclassified notice of the solicitation or a copy of the solicitation. Primary purpose is to reach local sources willing to visit the contracting office at least once a week. Especially useful in providing notice of requirements to local small business.	Unless exempt under FAR 5.101(a)(2)(ii) (e.g., oral or FACNET solicitation), notice is required for all contract actions over $10,000 ($5,000 for DoD) but not over $25,000. Posting for actions over $25,000 is useful and may be required by your agency.
FAR 5.201	Commerce Business Daily (CBD) Synopsis of Proposed Contract Actions	A synopsis of upcoming acquisitions following the format in FAR 5.207. Primary purposes are to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities. Designed to reach interested national and international sources. Especially useful in providing notice of larger requirements that will attract distant sources.	Required for all nonexempt supply and service contract actions over $25,000. (Exemptions include acquisitions not expected to exceed the simplified acquisition threshold made via FACNET by an activity with interim or full FACNET certification.)

Table continued on next page

2.3.1 Strategies For Publicizing The Acquisition (cont)

Methods of Publicizing the Buy(cont)

Continuation of the table presenting different methods of publicizing the buy and situations where the method can provide the most useful results in increasing competition.

	Method of Publicizing	Description	Situations for Use
FAR 5.301	Commerce Business Daily (CBD) Synopsis of Contract Awards	A synopsis of contract awards following the format in FAR 5.207.	Required for all nonexempt supply and service purchase actions over $25,000 subject to Trade Agreements Act, or likely to result in any subcontracts. (Exemptions include acquisitions not expected to exceed the simplified acquisition threshold made via FACNET by an activity with interim or full FACNET certification.)
FAR 5.101(b)(1)	Handouts	Listings or synopses of proposed contracts published periodically, normally once a week. May be posted much like notices required for contracting offices or in other locations convenient for local sources.	Particularly useful when the you want to bring unique requirements to the attention of local sources. By providing the information in a usable format, handouts make collecting information easier for potential sources and may increase competition.
FAR 5.101(b)(2)	Notices to Trade Associations	Handouts or similar publications may be distributed to local trade associations with a membership potentially interested in contracting to provide required goods and services.	Particularly useful when you want to bring unique requirements to the attention of firms in the trade that may never have considered Government business.

2.3.1 Strategies For Publicizing The Acquisition (cont)

Methods of Publicizing the Buy(cont)

Continuation of the table presenting different methods of publicizing the buy and situations where the method can provide the most useful results in increasing competition.

FAR 5.101(b)(1)

METHOD OF PUBLICIZING	DESCRIPTION	SITUATIONS FOR USE
Federal Acquisition Computer Network (FACNET)	Governmentwide electronic commerce/ electronic data interchange (EC/EDI) systems architecture for the acquisition of supplies and services that provides for electronic data interchange of acquisition information between the Government and the private sector. It employs nationally and internationally recognized data formats, and provides universal user access.	For activities with interim or full FACNET certification, this is the primary means of notifying potential sources of Government requirements that are not expected to exceed the simplified acquisition threshold. When Governmentwide certification is achieved, FACNET will be the primary means of notification for acquisitions not expected to exceed $250,000.
Electronic Announcements Other than FACNET	Electronic dissemination of requirements lists or synopses using of an electronic bulletin board or Internet home page. Potential offerors can use computers and modems to gain immediate national and international access to Government requirements.	Particular useful when you want to reach national or international firms that are interested in Government contracting. To be effective, broad publicity must be used to inform the public of the existence of the bulletin board or Internet home page.

Table continued on next page

2.3.1 Strategies For Publicizing The Acquisition (cont)

Methods of Publicizing the Buy(cont)

Continuation of the table presenting different methods of publicizing the buy and situations where the method can provide the most useful results in increasing competition.

FAR 5.101(b)(3)

METHOD OF PUBLICIZING	DESCRIPTION	SITUATIONS FOR USE
Announcements to Mass Media Without Cost	Announcements can be made in the form of news releases to newspapers, magazines, or other mass media without cost. Announcements may even emphasize the public service that will be performed by firms competing to meet Government requirements.	Particularly useful when you want to reach firms that may never have considered Government business Announcements may be made about any significant proposed purchase, but larger requirements and traditionally non-competitive requirements will likely be considered the most newsworthy.
Paid Advertisements	Paid advertisements can be tailored to get the exact message the Government wants to send to businesses in the identified target area, whether or not the business is specifically trying to identify Government requirements. You may use a single newspaper or several newspapers in a region. You may place orders for paid advertising directly with the media or through an advertising agency.	Use only when you anticipate that you cannot otherwise obtain effective competition. Do not place any advertisements proposed contracts in a newspaper published and printed in the District of Columbia (DC) unless supplies or services will be furnished or labor performed in DC or adjoining counties of Maryland and Virginia. Prior to using paid newspaper advertisements, you must obtain approval from the agency head or designee.

Purchase Widgets (cont)

"Tightly edit the schedule of the solicitation." That is what your supervisor always tells buyers who are preparing solicitations. Until now, you thought that she meant, "Make the delivery schedule as short as possible." Now you know that she meant that you should assure that the technical and delivery requirements of the solicitation are as clear and concise as possible. The clearer and more concise they are, the greater the probability of effective competition. Accordingly, you have closely reviewed solicitation technical and delivery requirements.

You have also reviewed the business terms in your solicitation and you are convinced that you are on the right track. You have a firm requirement with a known history. The risk is low and a firm fixed-price contract seems appropriate.

Based on your understanding of the requirement, you have submitted your synopsis for the Commerce Business Daily (CBD). You hope the synopsis will identify new widget sources. You have also posted the requirement on your contracting office solicitation bulletin board. Since you know that you have already identified the major widget producers in the United States for your source list, it appears that additional efforts to identify sources are unnecessary.

Price-Related Data From Offerors — CHAPTER 3

Chapter Vignette

> ***WIDGET ACQUISITION (cont)***
>
> *This acquisition began when you received a purchase request for 98 widgets. After analyzing available market data, you developed a preliminary price estimate of $4,625 a unit for a total of $453,250.*
>
> *During your research, you determined that the user has a requirement for 98 additional widgets identical to the 98 widgets identified on the purchase request. The user had intended to request the additional units in about two months. Working with the user, you obtained a second purchase request for 98 units and combined the two requirements into a total contract requirement of 196 units to maximize competition and minimize total cost to the Government.*
>
> *Your preliminary estimate of the unit price for 196 units is still $4,625, with a total price of $906,500.*
>
> *Now you must determine whether you should require offerors to submit Certified Current Cost or Pricing Data.*

Learning Objectives

At the End of This Chapter

At the end of this chapter you will be able to:

Classroom Learning Objective 3/1
Identify contract actions for which certified cost or pricing data or information other than cost or pricing data are required.

Classroom Learning Objective 3/2
Determine whether to except an offeror from submitting cost or pricing data based on adequate price competition, catalog prices, market prices, prices set by law or regulation, other commercial item prices, commercial item modification prices, or a waiver of the requirement.

Classroom Learning Objective 3/3
Determine whether to require additional information from an offeror after receipt of initial offers.

3.0 Introduction (cont)

In This Chapter

This chapter covers the steps you will take to determine what data will be needed from offerors to support the pricing decision:

SECTION	DESCRIPTION	SEE PAGE
3.1	Determining Solicitation Pricing Information Requirement	3-8
	3.1.1 Determining if Competition is Likely	3-10
	3.1.2 Determining If the Expected Price Exceeds the Threshold	3-14
	3.1.3 Determining Whether to Require Cost or Pricing Data Below the Threshold	3-17
	3.1.4 Determining Whether to Require Information Other Than Cost or Pricing Data	3-19
	3.1.5 Incorporating Solicitation Requirements	3-26
3.2	Excepting Offerors from Cost or Pricing Data Requirements	3-29
	3.2.1 Excepting an Offeror Based on Adequate Competition	3-32
	3.2.2 Excepting an Offeror Based on Established Catalog or Market Pricing	3-3
	3.2.3 Excepting an Offeror Based on Regulated Pricing	3-43
	3.2.4 Excepting an Offeror Based on Commercial Item Pricing	3-45
	3.2.5 Excepting an Offeror Based on Modification of a Commercial Item	3-48
	3.2.6 Waiver of the Requirement	3-51
3.3	Determining Whether to Require Pricing Information After Receipt of Offers	3-55

3.0 Introduction (cont)

General Policy on Requiring Information From Offerors

FAR 14.407-3(g)

The policies on obtaining and evaluating data from offerors described in this Chapter **apply only to acquisition by negotiation**. You **SHALL NOT** require offerors to submit cost or pricing data or pricing information other than cost or pricing data with sealed bids. You may only require bidders to submit original worksheets and other data used in bid preparation when there is an alleged mistake in bid.

FAR 15.802

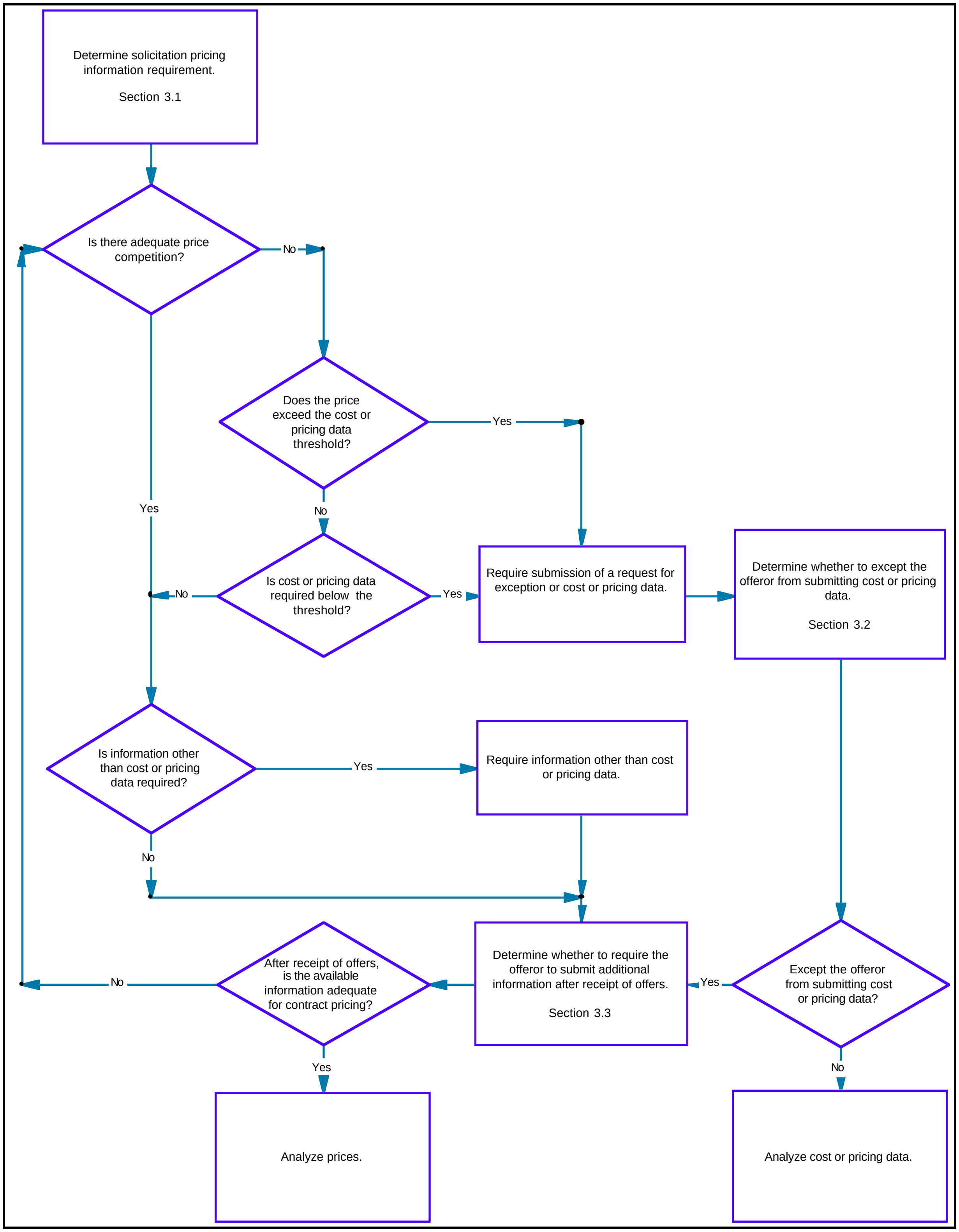
When conducting acquisition by negotiation, do not require offerors to submit information that is not required by law or needed to determine price reasonableness. Generally, use the following guidelines:

- Do not require further information from the offeror if the price is based on adequate price competition, unless additional information is required to determine price reasonableness or cost realism.
- When you must obtain price-related information (e.g., established catalog or market prices), rely first on information available within the Government; second, on information obtained from sources other than the offeror.
- If you need price-related information from the offeror, obtain it from the offeror.
- When you must obtain cost information from the offeror, rely on information other than cost or pricing data whenever possible. Unless cost or pricing data are required by law, limit your requirements to the data needed to determine whether the offered price is fair and reasonable.
- Use every means available to ascertain a fair and reasonable price prior to requiring offerors to submit cost or pricing data. Require submission of the data when they are required by the Truth in Negotiations Act (TINA) and no exception or waiver applies. However, do not require submission of cost or pricing data when the offeror qualifies for an exception. Consider requesting a waiver of TINA requirements when data are required by law but you can determine price reasonableness without the data.

Note that the guidelines above are general guidelines. They do not give an offeror the right to refuse to provide any information required by the solicitation. They are designed to make the Government contracting process more efficient.

3.0 Introduction (cont)

Flow Charts Outlining the Decision Process



3.0 Introduction (cont)

Cost or Pricing Data

FAR 15.801
FAR 15.804-4

Cost or pricing data are all facts that, as of the date of price agreement or, if applicable, another date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data require certification in accordance with FAR 15.804-4. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They include such factors as:

- Vendor quotations;
- Nonrecurring costs;
- Information on changes in production methods and in production or purchasing volume;
- Data supporting projections of business prospects and objectives and related operations costs;
- Unit-cost trends such as those associated with labor efficiency;
- Make-or-buy decisions;
- Estimated resources to attain business goals; and
- Information on management decisions that could have a significant bearing on costs.

3.0 Introduction (cont)

Information Other Than Cost or Pricing Data

FAR 15.801
FAR 15.804-4

Information other than cost or pricing data is any type of information that is not required to be certified (in accordance with FAR 15.804-4) that is necessary to determine price reasonableness or cost realism. For example, such information may include pricing, sales, or cost information. If you require an offeror to submit data with the intent of requiring certification, but later determine that certification is not required, consider the data submitted as information other than cost or pricing data.

Certificate of Current Cost or Pricing Data

FAR 15.804-4

When you require submission of cost or pricing data, you must require the successful offeror to execute a Certificate of Cost or Pricing Data. Using the FAR-prescribed format, the offeror certifies that data submitted are current, accurate, and complete as of the date of price agreement or another date agreed upon between the parties that is as close as practicable to the date of agreement on price.

What happens if you require submission of cost or pricing data, an offeror submits the data, but you later find that the offeror should have been excepted from the requirement? In that case, you shall not consider the data submitted as cost or pricing data and you shall not require data certification.

Defective Pricing

FAR 15.804-7

Defective pricing occurs when an offeror submits cost or pricing data and completes a Certificate of Current Cost or Pricing Data, but it later turns out that the contract was overpriced because the data submitted were not current, accurate, and complete. Contract clauses require a contract price reduction for overpricing related to the defective cost or pricing data. The Government is entitled to interest on any overpayments related to the defective pricing on accepted supplies or services. In certain situations, the Government is also entitled to penalty amounts on overpayments related to the defective pricing.

3.1 Determining Solicitation Pricing Information Requirement Overview

In This Section

This Section covers the points that you should consider in determining whether to include a requirement in the solicitation for an offeror to submit cost or pricing data or information other than cost or pricing data.

TOPIC	SEE PAGE
3.1.1 Determining if Competition is Likely	3-10
3.1.2 Determining If the Expected Price Exceeds the Threshold	3-14
3.1.3 Determining Whether to Require Cost or Pricing Data Below the Threshold	3-17
3.1.4 Determining Whether to Require Information Other Than Cost or Pricing Data	3-19
3.1.5 Incorporating Solicitation Requirements	3-26

Importance of Determination

As you prepare a solicitation for a negotiated contract action, you must decide whether to require an offeror to submit cost or pricing data or information other than cost or pricing data. Your decision is particularly important because it can effect competition, pricing, timeliness, and other aspects of the acquisition process.

If you do not require cost or pricing data when they are required by the Truth in Negotiations Act (TINA) (as amended), you will violate the law and FAR requirements. If you do not require cost or pricing data or information other than cost or pricing data when you need the data for contract pricing, you may pay a price that is too high.

If you require submission of cost or pricing data when they are not required for contract pricing, some prospective offerors may refuse to submit offers because of the unnecessary requirement. Firms that do submit offers will face increased proposal preparation costs. Submission and analysis of cost or pricing data will generally increase acquisition lead time. Both contractor and Government resources will be wasted during analysis of the unneeded data.

Overview (cont)

Importance of Determination (cont)

If you are not sure whether you will need cost or pricing data or information other than cost or pricing data, you can defer the decision until after you receive the initial proposal. However, if you decide to require cost or pricing data after you receive an offeror’s initial proposal, you will substantially increase acquisition lead time as you wait for the offeror to prepare the necessary cost or pricing data.

3.1.1 Determining if Competition is Likely

General Policy

FAR 15.804-1

DO NOT require offerors to submit cost or pricing data if you expect the price of the contract action will be based on adequate price competition.

You should expect that the contract action price will be based on adequate price competition if you expect that two or more responsible offerors, competing independently, will submit priced offers responsive to the Government's expressed requirement and:

- Award will be made to a responsible offeror whose proposal offers either the greatest value to the Government and price is a substantial factor in source selection; or the lowest evaluated price; and
- You expect that the price of the otherwise successful offeror will be reasonable. (Situations where you would expect prices to be unreasonable prior to solicitation of offers are **extremely** rare. Any finding that the contract price is expected to be unreasonable, must be supported by a statement of facts and approved at a level above the contracting officer.)

If you are procuring an item from a single source that you recently procured competitively (e.g., under an unusual or compelling urgency), you may still be able to except the offeror from submitting cost or pricing data based on the recent competition. You can except the single-source offeror from submission of cost or pricing data based on adequate price competition if you expect that price analysis will clearly demonstrate that the proposed price is reasonable in comparison with current or recent prices for the same or similar items purchased in comparable quantities, under comparable terms and conditions, under contracts that resulted from adequate price competition.

3.1.1 Determining if Competition is Likely (cont)

Independent Competition

FAR 6.302-1(c)

To have adequate price competition, you must have two or more offerors contending independently for contract award.

Brand name acquisitions raise special concerns about independent competition. If the Government requirement uses a brand name description or other description to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer you cannot have **full and open competition** regardless of the number of sources solicited. That is why brand name descriptions must be approved in accordance with FAR Part 6.

You may still be able to obtain **adequate price competition** among dealers if the acquisition involves **value added by the contractor** so that the brand name item is a relatively small part of the total acquisition. Examples of situations where you may have adequate price competition include acquisitions where the brand name item:

- Is a component of a larger system being acquired by the Government;
- Requires contractor modification for Government use;
- Requires contractor testing to qualify for Government use; or
- Requires unique packaging to meet the needs of the Government.

However, if the item will simply flow through the contractor without any **value added**, it is **unlikely that you will have adequate price competition because the manufacturer will control the majority of the acquisition price**. Dealers may actively compete within their portion of the price, but the manufacture’s pricing policy to dealers will likely determine the winner. Dealers cannot price the product independently because all must ultimately rely on the same source for the item.

Be especially careful when the manufacturer is one of the competitors. Since the manufacturer controls its pricing policy to dealers, the manufacturer can usually win the competition if it desires.

3.1.1 Determining if Competition is Likely (cont)

Price as a Substantial Factor

Comp Gen B-176217& 189884

Guidelines for adequate price competition require that price must be a "substantial factor" in the award decision for a greatest value source selection to be considered to have adequate price competition. How large a factor must price be before it is considered "substantial." That is a matter of judgment. The question is whether price is a large enough factor to cause offerors to seriously consider price in preparing their offers. The Comptroller General (Comp Gen) has found adequate price competition in cases where price was assigned a weight of only 20 percent in the award decision. However, price is usually assigned a weight that is higher than 20 percent.

Recent Competition

The FAR does not provide any guidelines on how recent competition must be to be considered as a basis for excepting an offeror from submitting cost or pricing data. As a result, the term "recent" must be judged subjectively -- the price must be recent enough to use as a basis for determining price reasonableness.

Normally, competition is considered recent if it took place within the last 12 months. However, be careful. Before you except an offeror from submission of cost or pricing data based on recent competition, examine the market to see how market conditions have changed since the last competitive acquisition. If the product market is extremely volatile, a price that is only a few months old may not be recent enough to use as a basis for determining price reasonableness.

3.1.1 Determining if Competition is Likely (cont)

Decisions on Requiring Data

Based on the general policy outlined above, use the following decision table to determine whether to establish a solicitation requirement for offerors to submit cost or pricing data.

DECISIONS RELATED TO REQUIRING COST OR PRICING DATA IN THE SOLICITATION	
If	**Then**
You can answer "YES" to ALL FOUR of the following questions ... 1. Do you expect offers from two or more responsible offerors contending and independently for contract award? 2. Do you expect that the price of the apparent successful offer will be fair and reasonable? (Before answering "no," you must prepare a finding explaining why the contract price is expected to be unreasonable, that is supported by a statement of facts and approved at a level above the contracting officer.) 3. Will award will be made, in accordance with the terms of the solicitation, to the responsible offeror whose proposal offers either: ◊ The greatest value to the Government; or ◊ The lowest evaluated price to the Government? 4. If award will be made to the responsible offeror whose proposal offers the greatest value to the Government, will price be a substantial factor in the award decision?	**Do not incorporate a solicitation requirement for the offeror to submit cost or pricing data.** In most cases, you can rely on price competition and information from your market analysis to determine price reasonableness. However, if necessary, consider requiring information other than cost or pricing data.
You can answer "YES" to the following question... 5. Do you expect that you will be able use price analysis to clearly demonstrate that the proposed price is reasonable in comparison with **current or recent prices for the same or similar items** purchased in comparable quantities, under comparable terms and conditions, under contracts that resulted from adequate price competition?	**Do not incorporate a solicitation requirement for the offeror to submit cost or pricing data.** In most cases, you can rely on the prior price competition and other information from your market analysis to determine price reasonableness. However, if necessary, consider requiring information other than cost or pricing data.
You answer "NO" to ANY of the Questions 1 thru 4 and you also answer "NO" to Question 5...	Continue your consideration of whether you should require a request for exception or cost or pricing data.

3.1.2 Determining If the Expected Price Exceeds the Threshold

Cost or Pricing Data Threshold

FAR 15.804-2(a)(1)
FAR 52.215-24
FAR 52.215-25

The cost or pricing data threshold for prime contracts and prime contract modifications is $500,000. This amount was considered for adjustment on October 1, 1995, but it was not changed. The need for adjustment will be considered again on October 1, 2000 and every five years thereafter.

The cost or pricing data threshold for subcontract awards and modifications will be the threshold in effect on the date of agreement on prime contract price or the date of prime contract award, whichever is later.

General Policy

FAR 15.804-2(a)(1)

- Unless an exception applies or the requirement is waived, you must obtain cost or pricing data before accomplishing any of the following actions whenever price is expected to exceed the cost or pricing data threshold in effect on the date of agreement on price, or the date of award, whichever is later; or, in the case of existing contracts, the threshold specified in the contract:
- The award of any negotiated contract except for undefinitized actions (e.g., letter contracts).
- The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor have been required to furnish cost or pricing data.
- The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or subcontract at any tier, if the contractor and each higher-tier subcontractor have been required to furnish cost or pricing data. When calculating the amount of a price adjustment, add the absolute values of increases and decreases. (For example, a $150,000 modification resulting from a reduction of $350,000 and an increase of $200,000 is a $550,000 price adjustment.) This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification.

3.1.2 Determining If the Expected Price Exceeds the Threshold (cont)

Adequate Price Competition

FAR 15.804-1(a)

If you expect the contract action to exceed the cost or pricing data threshold but you expect it to be based on adequate price competition, do not require offerors to submit cost or pricing data.

Other Exceptions

FAR 15.804-1(a)
FAR 15.804-8(i)

Even if you think that another exception to cost or pricing data requirements may apply, include a requirement in the solicitation for the offeror to submit a request for exception or cost or pricing data. In order for the offeror to qualify for any other exception, the offeror must submit a written request for exception. After you receive the written request, you can determine which exception (if any) should apply.

3.1.2 Determining If the Expected Price Exceeds the Threshold (cont)

Decision on Requiring Data

Based on the general policy outlined previously, use the following decision table to determine whether to establish a solicitation requirement for offerors to submit a request for an exception with necessary price support information or submit cost or pricing data.

DECISIONS RELATED TO REQUIRING COST OR PRICING DATA IN THE SOLICITATION	
If you do not expect adequate price competition and ...	**Then**
You can answer "YES" to BOTH of the following questions: 1. Do you expect the price of the contract action to exceed the cost or pricing data threshold? 2. Is the contract action one of the following types: ◊ Award of a negotiated contract, except for an undefinitized contract action (e.g., a letter contract.); ◊ Award of a subcontract at any tier, if the contractor and each higher-tier subcontractor have been required to submit cost or pricing data (Note: A waiver of the requirement for the contractor or higher-tier subcontractor does not waive the requirement for subcontractors not specifically included in the waiver.); ◊ Modification of any contract where the absolute amount of related changes exceed the threshold; or ◊ Modification of a subcontract at any tier where the absolute amount of related changes exceed the threshold and the contractor and each higher-tier have been required to submit cost or pricing data (Note: A waiver of the requirement for the contractor or higher-tier subcontractor does not waive the requirement for subcontractors not specifically included in the waiver.).	Incorporate a requirement in the solicitation for the offeror to submit a request for exception with necessary price support information or cost or pricing data.
You answer "NO" to Question 1 above....	Determine if cost or pricing data should be required at or below the threshold.
You answer "NO" to Question 2 above....	Do not incorporate a solicitation requirement for the offeror to submit cost or pricing data, but you may consider requiring information other than cost or pricing data.

3.1.3 Determining Whether to Require Cost or Pricing Data Below the Threshold

General Policy

FAR 15.804-1(a)(1) & 2(a)(2)

You may require cost or pricing data below the cost or pricing data threshold, but only if:

- The estimated value of the contract action exceeds the simplified acquisition threshold.
- No exception to obtaining cost or pricing data applies. (For example, you could not require cost or pricing data when you expect adequate price competition.)
- The head of the contracting activity (without power of delegation) authorizes you to require cost or pricing data. When authorizing you to obtain the cost or pricing data, the head of the contracting activity must justify the requirement for cost or pricing data. File documentation must include a written finding that cost or pricing data are necessary to determine whether an offered price is fair and reasonable and the facts supporting that finding.

Consider Benefits vs. Costs

If you are considering the need for cost or pricing data, consider both the benefits and costs associated with requiring the data. Do not consider requiring submission unless the benefits outweigh the costs involved. If the benefits do outweigh the costs involved, provide the results of your analysis to the head of the contracting activity to support the justification for requiring the data.

Benefits of Requiring Cost or Pricing Data:

- Obtaining cost or pricing data may result in the negotiation of a more favorable price to the Government than otherwise obtainable.
- The requirement for cost or pricing data certification makes offerors more careful to assure that data submitted are accurate, complete, and current on the date of agreement on price or another date agreed upon between the parties that is as close as practicable to the date of agreement on price.
- Data certification will provide remedies to the Government in the event that cost or pricing data are not accurate, complete, and current on the date stated in the certification.

3.1.3 Determining Whether to Require Cost or Pricing Data Below the Threshold (cont)

Consider Benefits vs. Costs (cont)

Costs of Requiring Cost or Pricing Data:

- There is a cost to the contractor in time and dollars to prepare, update, and track cost or pricing data—over and above the cost of providing information other than cost or pricing data that might suffice for verifying price reasonableness.
- There is a cost to the Government in time and dollars to audit and analyze cost or pricing data.
- There is a cost related to the extended lead time needed for proposal analysis, if you have to go through an entire cost proposal instead of working with more limited data.
- There is a cost to the Government of sources lost because offerors are unable or unwilling to submit certified data.
- Even if data are defective, there is a cost associated with auditing, analyzing, and negotiating an appropriate price reduction.

Situations Where Benefits Normally Exceed Costs

Give special consideration to requiring certified cost or pricing data if the offeror, contractor, or subcontractor:

- Has been the subject of recent or recurring and significant findings of defective pricing,
- Currently has significant deficiencies in cost estimating sys-tems, or
- Has recently been indicted for, convicted of, or the subject of an administrative or judicial finding of fraud regarding its cost estimating systems or cost accounting practices.

3.1.3 Determining Whether to Require Cost or Pricing Data Below the Threshold (cont)

Decision on Requiring Data

Use the following decision table to determine if you should require cost or pricing data below the threshold.

DECISIONS RELATED TO REQUIRING COST OR PRICING DATA IN THE SOLICITATION	
If you do not expect adequate price competition, but you do expect contract price to be at or below the cost or pricing threshold, and ...	**Then**
You can answer "YES" to ALL FOUR of the following questions: 1. Do you expect the price of the contract action to exceed the simplified acquisition threshold? 2. Has the head of the contracting activity (without power of redelegation) authorized you to require cost or pricing data? 3. Does the authorization from the head of the contracting activity include a written finding that cost or pricing data are necessary to determine whether the price is fair and reasonable along with facts supporting that finding? 4. Is the contract action one of the following types: ◊ Award of a negotiated contract, except for an undefinitized contract action (e.g., a letter contract.); ◊ Award of a subcontract at any tier, if the contractor and each higher-tier subcontractor have been required to submit cost or pricing data (Note: A waiver of the requirement for the contractor or higher-tier subcontractor does not waive the requirement for subcontractors not specifically included in the waiver.); ◊ Modification of any contract where the absolute amount of related changes exceed the threshold; or ◊ Modification of a subcontract at any tier where the absolute amount of related changes exceed the threshold and the contractor and each higher-tier have been required to submit cost or pricing data (Note: A waiver of the requirement for the contractor or higher-tier subcontractor does not waive the requirement for subcontractors not specifically included in the waiver.)?	Incorporate a requirement in the solicitation for the offeror to submit a request for exception with necessary price support information or cost or pricing data.
You answer "NO" to ANY of the Questions above....	Do not incorporate a solicitation requirement for the offeror to submit cost or pricing data, but you may consider requiring information other than cost or pricing data.

3.1.4 Determining Whether to Require Information Other Than Cost or Pricing Data

Situations Where Information May Be Required

FAR 15.802
FAR 15.804-5

Only require an offeror to submit information other than cost or pricing data that you need to determine reasonableness of the price or cost realism. Give special consideration to requiring information other than cost or pricing data when you:

- Anticipate adequate price competition but you do not expect to be able to rely on comparisons with competitive offers to determine price reasonableness (e.g. offerors may use different technical approaches to meeting Government requirements).
- Expect to except an offeror from submitting cost or pricing data based on an exception other than adequate price competition, but additional information is needed to make relevant price comparisons.
- Have determined not to require cost or pricing data solely because an action is at or below the cost or pricing data threshold, but cost or price information is needed to determine price reasonableness.

Data Format

FAR 15.804-5(a)(2)

Whenever you do require information other than cost or pricing data:

- Permit the offeror to select the format for submitting the information unless you determine that use of a specific format is essential.
- Ensure that the information used to support price negotiations is sufficiently current to permit negotiation of a fair and reasonable price.
- However, you should limit requests for updated offeror information to information that affects the adequacy of the proposal for negotiations, such as changes in price lists.
- Never require certification of any information other than cost or pricing data.

3.1.4 Determining Whether to Require Information Other Than Cost or Pricing Data (cont)

Decision on Requiring Information

Use the following decision table to determine if you should require information other than cost or pricing data.

DECISIONS RELATED TO REQUIRING COST OR PRICING DATA IN THE SOLICITATION	
If	**Then**
You can answer "YES" to ALL of the following questions: 1. Do you expect that the offeror will qualify for an exception from requirements to submit cost or pricing data? 2. Do you believe that you need price-related information to determine price reasonableness? 3. Do you believe that the price-related information that you require is not practicably available from any source other than the offeror? 4. Do you believe that the offeror should have the price-related information that you need to determine price reasonableness?	Require the offeror to submit price-related information other than cost or pricing data.
You can answer "YES" to ALL of the following questions: 1. Do you expect adequate price competition? 2. Do you believe that you need cost information to determine price reasonableness or cost realism?	Require the offeror to submit cost information other than cost or pricing data.
You can answer "YES" to ALL of the following questions: 1. Are you acquiring an item with an estimated price at or below the cost or pricing data threshold? 2. Are you concerned about determining price reasonableness based on the information currently available? 3. Are you not requiring cost or pricing data solely because the contract action is at or below the cost or pricing data threshold?	As a minimum, request information on the prices and quantities at which the same or similar items have previously been sold, that is adequate for evaluating the reasonableness of the proposed price. If necessary, you may also require the offeror to submit cost information.

Tailor Information Requirements

Tailor any cost information requirements so that you only require information that is essential to your analysis. For example, do not require information on direct labor cost if you are only concerned about the realism of direct material costs.

3.1.4 Determining Whether to Require Information Other Than Cost or Pricing Data (cont)

Price-Related Information

As you make price comparisons, particularly comparisons between commercial prices and prices offered to the Government, you must understand factors that could cause price differences:

PRICE-RELATED INFORMATION		
Information Element	**Purpose of Analysis**	**Analysis Questions**
Offeror's Marketing System	Some firms sell direct to the ultimate customer; others deal with the ultimate customer through a complex chain of jobbers, brokers, sales agents, or distributors. The marketing system affects the pricing structure. A firm selling through intermediaries typically has relatively lower prices than a firm selling a similar product directly to the ultimate customer. Intermediaries provide services to both the producer and the customer, and they require compensation for providing those services.	Does you contract require a different level of marketing support than other contracts for the same or similar products? Should differences affect contract price?
Services Normally Provided	Different firms and industries provide different levels of support services for their products, including engineering and financing.	Does the Government require the services provided?
Normal Quantity Per Order	We normally assume that larger order quantities will reduce the price per unit. Therefore it is important to determine how the size of Government orders compares with the size of commercial orders.	Based on the relative size of Government orders compared to commercial orders, should you should reasonably expect to pay a different price?
Annual Volume of Sales to Largest Customers	Commercial firms often negotiate special discounts with major customers, over and above normal order quantity discounts, based on total volume. In comparing total volume of purchases, you should normally consider known acquisitions from all Government activities as a group.	For what level of discount should the overall level of Government business qualify?
Differences Between Major Classes of Customers	Not all customers are the same. Customer needs vary and it is likely that the services provided by the offeror will vary with customer needs. Information on different classes of customers such as total sales, services provided, and discounts can provide useful information.	What prices do customers similar to the Government pay? Is that price different than the price paid by other customers? Why?
Information Regarding Past Contracts.	Historical prices are common base for price analysis. Normally, you will obtain the pricing data from Government sources, but there will be situations where you are dealing with a new firm or a familiar firm offering a new item. If the offeror can provide you with information on other Government sales, you can verify the information and use it in making your pricing decision.	Can the offeror provide you with information on other sales to the Government? Can you verify the information provided?

3.1.4 Determining Whether to Require Information Other Than Cost or Pricing Data (cont)

Cost Information

If necessary, you may request cost information other than cost or pricing data to determine the cost realism of competing offers or to evaluate competing approaches. The table below examines four situations in which cost realism data might be necessary. Examples of the type of questions that cost data could help answer are also provided. Government technical and audit assistance may be required to analyze the cost data and answer related questions.

<table>
<tr><th colspan="3">COST INFORMATION</th></tr>
<tr><th>SITUATION</th><th>Purpose of Analysis</th><th>Analysis Questions</th></tr>
<tr><td>You expect one or more proposals will be substantially different than the Government cost estimate.</td><td>Performance requirements used to provide greater opportunity for contractor technical innovation permit a variety of approaches to meeting Government need. However, the use of performance requirements makes competitive price comparisons suspect. You must determine if an offeror's price is reasonable and consistent with its technical proposal. Remember the paper cup/ceramic mug example? The fact that a paper cup is a cheaper 8-ounce container does little to determine price reasonableness.</td><td rowspan="4">Are proposed costs realistic for the work to be performed?

Do proposed costs reflect a clear understanding of the requirements?

Are costs consistent with the various elements of the offeror's technical proposal?</td></tr>
<tr><td>You expect a cost-reimbursement or incentive contract.</td><td>With these contract types, final contract price will depend on final contract cost. Therefore, you must determine if price estimates are realistic. An unreasonably low contract price estimate may look attractive, but the final price may be substantially higher. Another firm, with a higher but more accurate cost estimate, may be able to deliver a lower final price to the Government.</td></tr>
<tr><td>You believe that the solicitation contains complex requirements that might not be fully understood by all offerors.</td><td>Determine if the offeror understands all contract requirements, including:
• Requirements that may have changed since the last purchase.
• Unusually complex requirements included in the specifications or statement of work.</td></tr>
<tr><td>You are concerned about contract quality.</td><td>Determine if the proposed price will permit the firm to meet contract quality and delivery requirements. Quality concerns can develop for even apparently simple contracts, such as janitorial services. Such contracts can easily be under-priced because offerors simply do not understand quality or delivery requirements. Concerns are normally greatest when firms have not contracted for the required product before and when past experience indicates that one or more prospective offerors have had performance problems.</td></tr>
</table>

3.1.5 Incorporating Solicitation Requirements

General Policy

FAR 52.215-41
FAR 52.215-42

There are several FAR clauses that you can use to require cost or pricing data or information other than cost or pricing data from an offeror.

- If you decide to require the offeror to submit a **request for exception or cost or pricing data**, insert FAR 52.215-41, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, (or Alternates I to III) in the solicitation. Alternates I to III require the offeror to submit the same data as the basic provision, but have different distribution or format requirements.

- If you do not believe that cost or pricing data are necessary for **contract pricing because an exception may apply**, but you need **information other than cost or pricing data**, insert FAR 52.215-41 (or Alternates I to IV) in the solicitation. Alternative IV is specifically designed for situations, such as adequate price competition, where the offeror is not required to request an exception.

- If you decide to require the offeror to submit a **request for exception or cost or pricing data** when **pricing contract modifications**, insert FAR 52.215-42, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data--Modifications, (or Alternates I to III) in the solicitation/contract. Alternates I to III require the offeror to submit the same data as the basic provision, but have different distribution or format requirements.

- If you do not believe that cost or pricing data will be necessary for **pricing contract modifications**, but you will need **information other than cost or pricing data**, insert FAR 52.215-41 (or Alternates I to IV) in the solicitation/contract. Alternative IV is specifically designed for this situation. Alternative IV is specifically designed for situations, such as adequate price competition, where the offeror is not required to request an exception.

3.1.5 Incorporating Solicitation Requirements (cont)

Decision on Incorporating the Solicitation Provision or Contract Clause

Use the following decision table to determine which clauses should be incorporated in the solicitation:

DECISIONS RELATED TO REQUIRING COST OR PRICING DATA IN THE SOLICITATION	
If...	**Then incorporate...**
You can answer "YES" to the following question: Do you believe that cost or pricing data will be required to support the contract pricing decision unless the offeror qualifies for an exception?	FAR 52.215-41, or one of the Alternates I - III depending on the data format and distribution required.
You can answer "YES" to BOTH of the following questions: 1. Do you believe that cost or pricing data will not be required to support the contract pricing decision because an exception may apply? 2. Do you believe that information other than cost or pricing data will be required to support the contract pricing decision?	FAR 52.215-41, or one of the Alternates I - IV depending on the data format and distribution required, as well as your expectation that the offeror will qualify for an exception. Use Alternative IV, if it is not necessary for the offeror to request an exception.
You can answer "YES" to the following question: Do you believe that cost or pricing data will be required to support the pricing of contract modifications?	FAR 52.215-42, or one of the Alternates I - III depending on the data format and distribution required.
You can answer "YES" to BOTH of the following questions: 1. Do you believe that cost or pricing data will not be required to support the pricing of contract modifications because an exception may apply? 2. Do you believe that information other than cost or pricing data will be required to support the contract pricing decision?	FAR 52.215-42, or one of the Alternates I - IV depending on the data format and distribution required, as well as your expectation that the offeror will qualify for an exception. Use Alternative IV, if it is not necessary for the offeror to request an exception.

3.1.5 Incorporating Solicitation Requirements (cont)

Exception Request Requirements

FAR 52.215-41
FAR 52.215-42

As you learned above, the basic version of FAR 52.215-41, Alternates I - III of FAR 52.215-41, the basic version of FAR 52.215-42, and Alternates I - III of FAR 52.215-42 all require the offeror to submit cost or pricing data. They also identify four situations under which an offeror can request an exception from requirements for submission of cost or pricing data:

- Catalog pricing;
- Market pricing;
- Pricing set by law or regulation; or
- Commercial item pricing.

FAR 52.215-42 also provides for the contractor to request an exception based on modification of a commercial item.

To qualify for any of these exceptions, the offeror must submit information other than cost or pricing data. While offerors are required to submit different information to qualify for different exceptions, the type of information required to qualify for a particular exception is always the same.

3.2 Excepting Offerors from Cost or Pricing Data Requirements Overview

In This Section

This Section covers the points that you should consider in determining whether a particular offeror qualifies for an exception to requirements for cost or pricing data in the solicitation or contract. In addition this section will cover the points that you should consider in determining whether a requirement for cost or pricing data should be waived when no exception applies.

TOPIC		SEE PAGE
3.2	Excepting Offerors from Cost or Pricing Data Requirements	3-27
3.2.1	Excepting an Offeror Based on Adequate Competition	3-32
3.2.2	Excepting an Offeror Based on Established Catalog or Market Pricing	3-35
3.2.3	Excepting an Offeror Based on Regulated Pricing	3-43
3.2.4	Excepting an Offeror Based on Commercial Item Pricing	3-45
3.2.5	Excepting an Offeror Based on Modification of a Commercial Item	3-48
3.2.6	Waiver of the Requirement	3-51

Overview

Introduction

FAR 15.804-2(c)
FAR 15.804-4

What should you do if your solicitation requires an offeror to submit cost or pricing data but later find that you should have excepted the offeror from the cost or pricing data requirement? You shall not consider the data in pricing the contract, and you shall not require certification in accordance with FAR 15.804-4.

FAR 15.15.804-1(b)

The exception to the cost or pricing data requirements could be based on:

- Federal Supply Service or Information Technology Service Multiple Award Schedule Prices
- Adequate price competition;
- Established catalog prices;
- Established market prices;
- Prices set by law or regulation;
- Commercial item pricing information adequate to support price analysis;
- Prices for a contract modification when the original contract price was excepted from cost or pricing data requirements, as long as the modification does not change the item from a commercial item to a noncommercial item.
- Waiver by head of the contracting activity without power of delegation.

Offeror Exception Requests

FAR 15.804-1(d)
FAR 52.215-41

In order to qualify for an exception, other than an exception for adequate price competition, from the requirements to submit cost or pricing data, the offeror must submit a written request. You may use the solicitation provision at FAR 52.215-41, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, or another method to outline the information that must be submitted with the request. When you receive an exception request from the offeror, determine, based on the information submitted by the offeror and any other information available, which exception (if any) applies. Conceivably, the exception that you use could be different than the one requested by the offeror.

Overview (cont)

Right to Examine Records Before Award FAR 52.215-41(a)(2) FAR 52.215-42(a)(2)	When requesting an exception based on catalog prices, market prices, or prices set by law or regulation, the offeror grants the contracting officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify the request for an exception and the reasonableness of price. The offeror is not required to provide access to cost or profit information or other data used by the offeror in determining the prices to be offered in the catalog or marketplace.
Multiple Award Schedule Price Exception FAR 15.804-1(c)(3)	When you are acquiring by separate contract an item that is included on an active Federal Supply Service or Information Technology Service Multiple Award Schedule contract, you should grant an exception to cost or pricing data requirements without requiring additional documentation if the offeror provides proof that an exception has been granted for the schedule item.
Special Arrangements for Repetitive Acquisitions FAR 15.804-1(b) FAR 15.804-1(c)(2)	You and the offeror may make special arrangements for the submission of exception requests for repetitive acquisitions. These arrangements can take any form as long as they set forth an effective period and the exception criteria at FAR 15.804-1(b) are satisfied. Such arrangements may be extended to other Government offices with their concurrence.
FAR 15.804-1(c)(1)	One common example of such an arrangement is an agreement that all items or specific items in a particular catalog are catalog priced. Before agreeing to such an arrangement, you must verify that the items are catalog priced. Your verification could involve an examination of sales of all items included in the catalog, but that would be impractical when the catalog is large. In such cases, you should consider use of sampling procedures to determine whether catalog prices are really being used for substantial commercial sales.

Overview (cont)

Prior Information Submissions

If the U.S. Government has acted favorably on an exception request for the same or similar items, then you may consider the prior submissions as support for the current exception request.

If you rely on a prior submission, you are not required to accept or rely on an exception decision made by another contracting officer. Another contracting officer may have granted an exception based on the information submitted, but given the same facts, you may determine that the circumstances do not warrant an exception. However, if you do refuse to grant an exception when another contracting officer has granted an exception based on the same information, you should be particularly careful in documenting your position.

Sampling in Exception Support

FAR 15.804-1(c)(1)

When there are several line items involved in the acquisition, you are not required to obtain information supporting an exception for each commercial line item. You may use sampling techniques.

FAR 52.215-41(a)(1)(ii)(C)
FAR 52.215-42(a)(2)(ii)(C)

FAR 52.215-41 and 52.215-42 both provide for the use of sampling techniques in examining requests for exception from cost or pricing data requirement based on catalog pricing. Offerors are only required to provide evidence of substantial sales to the general public and the catalog pricing involved when the extended item price exceeds a stated amount.

There are no FAR provisions/clauses that provide for the use of sampling techniques in requiring information to support other exceptions. If you wish to provide for the use of sampling techniques in requiring information to support other exceptions, you must use agency or locally developed provisions/clauses to limit the information collected.

Price Analysis

FAR 15.804-1(a)
FAR 15.805-1(b)

Remember that granting an exception from cost or pricing data requirements does not mean that you must accept the offered price as fair and reasonable. It simply means that you have enough information to make the pricing decision without cost or pricing data. You must still perform price analysis to determine if the price is fair and reasonable.

3.2.1 Excepting an Offeror Based on Adequate Competition

General Policy

FAR 15.804-1

Before you issued the solicitation you had to decide if you expected adequate price competition. If you did not expect competition and the acquisition price was estimated to be greater than the cost or pricing data threshold, you probably required the offeror to submit a request for exception or cost or pricing data. Other firms may have requested copies of the solicitation, but because of your past experience you did not expect any of these firms to submit a viable competitive offer.

FAR 15.804-2(c)

What happens if you unexpectedly receive adequate price competition? If you required cost or pricing data, but obtained adequate price competition, do not require certification of any data submitted. Treat the data as information other than cost or pricing data.

What happens if the offeror requests an exception based on recent competitive acquisition? The competitive acquisition could have been made by your organization or another organization using the same requirement description. If price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items purchased in comparable quantities, under comparable terms and conditions under contracts that resulted from adequate price competition, do not require certification of any data submitted. Treat the data as information other than cost or pricing data.

3.2.1 Excepting an Offeror Based on Adequate Competition (cont)

Exception Decision

Use the following decision table to determine if you should except an offeror from a requirement for cost or pricing data based on adequate price competition.

<table>
<tr><th colspan="2">DECISIONS EXCEPTING OFFEROR(S) FROM SUBMITTING COST OR PRICING DATA</th></tr>
<tr><th>If...</th><th>Then...</th></tr>
<tr><td>You can answer “YES” to ALL FOUR of the following questions:
1. Did you receive offers from two or more responsible and independent offerors?
2. Is the price of the apparent successful offer fair and reasonable?
3. Will award will be made, in accordance with the terms of the solicitation, to the responsible offeror whose proposal offers either:
◊ The greatest value to the Government; or
◊ The lowest evaluated price to the Government?
4. If award will be made to the responsible offeror whose proposal offers the greatest value to the Government, will price be a substantial factor in the award decision?</td><td>Except the offerors from submitting cost or pricing data.
Do not require certification of any data submitted by any offeror.
Treat any data received as information other than cost or pricing data.</td></tr>
<tr><td>You can answer “YES” to ALL THREE the following questions:
1. Even though only one independent offer was received from a responsible offeror, does price analysis clearly demonstrate that the proposed price is reasonable in comparison with current or recent prices for the same or similar items?
2. Were the recent prices for comparable quantities purchased under comparable terms and conditions?
3. Did the recent prices result from adequate price competition?</td><td>Except the offerors from submitting cost or pricing data.
Do not require certification of any data submitted by any offeror.
Treat any data received as information other than cost or pricing data.</td></tr>
<tr><td>You cannot except the offeror(s) from submitting cost or pricing data based on your responses to the questions above....</td><td>Consider other possibilities for exception.</td></tr>
<tr><td>You cannot except the offeror(s) from submitting cost or pricing data based on your responses to the questions above and no other exception or waiver applies...</td><td>Require the offeror to:
1. Submit cost or pricing data (if the offeror has not already done so).
2. Provide a Certificate of Current Cost or Pricing Data after agreement on contract price.</td></tr>
</table>

3.2.2 Excepting an Offeror Based on Established Catalog or Market Pricing

General Policy

FAR 15.804-1(a)(1)(ii)

Except offerors from submitting cost or pricing data, if you determine that the proposed prices are based on established catalog or market prices of commercial items sold in substantial quantities to the general public.

FAR 15.804-1(b)(2)(iii)

To use the catalog or market pricing exception, the item being acquired does not need to be identical to the catalog or market priced item. An item price may be based on an established catalog or market price if the item or class of items being purchased is sufficiently similar to the catalog or market priced commercial item to ensure that any difference in prices can be identified and justified without resorting to cost analysis.

General Public

FAR 15.804-1(b)(2)(v).

The general public ordinarily consists of all buyers other than the U.S. Government or its instrumentalities (e.g., U.S. Government corporations).

Sales to the general public do not include sales to affiliates of the offerors or purchases by the U.S. Government on behalf of foreign governments (e.g., Foreign Military Sales). On the other hand, a direct sale to a foreign government by the offeror should be considered a sale to the general public.

If you can determine without requiring information from the offeror that sales are for Government end use, these sales need not be considered sales to the general public. For example, you may know that the only end user for a particular component is the Government. Several different manufacturers may buy the component but they all will only use the component in producing systems for the Government.

3.2.2 Excepting an Offeror Based on Established Catalog or Market Pricing (cont)

Sold in Substantial Quantities (cont)

- During the last year the offeror has sold 20 units of the item. The current acquisition is for 3,000 units. Should you consider the sales during the past year to be substantial?

  This is a judgment call. If you feel that you have enough pricing information without cost or pricing data, you might grant the exception. However, in most cases, you would not consider total sales of 20 units substantial when you are making a single purchase of 3,000 units.

- Are there special requirements for determining whether the firm has sold a substantial quantity of a particular service?

  Yes, for services to be sold in substantial quantities, they must also be customarily provided by the offeror, using personnel regularly employed, and equipment (if any is necessary) regularly maintained principally to provide the services.

- What should the offeror use to support sales volume calculations?

  The offeror could support calculations with sales orders, contracts, shipments, invoices, actual recorded sales, or other records, so long as the method is used consistently, provides an accurate indication of sales activity, and is verifiable.

- Can the offeror use sales by an affiliate in calculating total sales?

  If the item would not otherwise qualify for an exception, you may consider sales of the item by affiliates. However, you must also consider the price of those sales in your price analysis. For example, if the price charged by affiliates is only 75 percent of the price charged by the offeror, you should consider that fact in your analysis.

- If other manufacturers sell essentially the same commercial item, can those sales be considered in determining whether sales are substantial?

  You may consider sales of essentially the same commercial item by other manufacturers or vendor in determining whether sales are substantial, provided that the price of those sales is also considered. Data to support sales quantities may also come from other manufacturers, industry associations or marketing groups, annual financial reports, etc.

3.2.2.1 Excepting an Offeror Based on Established Catalog Pricing

Established Catalog Price

15.804-1(b)(2)(i)

Established catalog prices are prices (including discount prices) recorded in a catalog, price list, schedule, or other verifiable and established record that are regularly maintained by the manufacturer or vendor; and are published or otherwise available for customer inspection.

- Can you consider a catalog regularly maintained if it is issued less often than once a year?

  Yes, as long as the prices in the catalog prices are used for contract pricing and the catalog is updated whenever prices change.

- Can 1-page circulars on company specials be considered as a basis for catalog pricing?

  Yes, as long as the circular prices are regularly used for customer pricing and available to the general public.

- A company normally does not use catalogs or price lists. However, the offeror's sales representative has just typed a special one-time price list just for this contract. Does this price list qualify as a base for exception?

  No. Because this is a one-time price list, there is no evidence that it is available to other customers for contract pricing.

- The offeror maintains an up-to-date price list on the Internet. Does this price list qualify as a base for exception?

  Yes. It is a verifiable and established record that is available to customers for inspection.

- The offeror maintains its price list in its customer service computer system. Does this price list qualify as base for exception?

  Yes. As long as customers can verify that they are being quoted the appropriate price.

3.2.2.1 Excepting an Offeror Based on Established Catalog Pricing (cont)

Offeror Request for Catalog Pricing Exception

FAR 52.215-41(a)(1)(ii)

An offeror wishing to receive a catalog pricing exception, must request it in writing. When requesting the exception, the offeror must (as a minimum):

- Attach a copy of or identify the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which this proposal is being made.
- Provide a copy or describe current discount policies and price lists (published or unpublished). For example, is the price list for sales to wholesalers, original equipment manufacturers, resellers, or retail customers.
- Provide, for each catalog item that exceeds the extended item price specified in the solicitation/contract, evidence of substantial sales to the general public.
  - ◊ The evidence may include sales order, contract, shipment, invoice, actual recorded sales or other records that are verifiable. In addition, if the basis of the price proposal is sales of essentially the same commercial item by affiliates, other manufacturers, or vendors, those sales may be included.
  - ◊ Explain the basis of each offered price and its relationship to the established catalog price (e.g., differences between offered product and the catalog priced product or discounts applied).
  - ◊ When the offeror has made substantial general public sales at prices other than catalog or price list prices, the offeror must indicate how the proposed price relates to the price of such recent sales in quantities similar to the proposed quantities.

3.2.2.1 Excepting an Offeror Based on Established Catalog Pricing (cont)

Exception Decision

FAR 15.804-1(b)(2)

Use the following decision table to determine if you should except an offeror from a requirement for cost or pricing data based on catalog pricing.

DECISIONS EXCEPTING OFFEROR(S) FROM SUBMITTING COST OR PRICING DATA	
If...	**Then...**
You can answer "YES" to ALL PARTS of the following SEVEN questions: 1. Did the offeror request an exception from cost or pricing data requirements? 2. Did the offeror attach a copy of or identify the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in your buying office? 3. If the offeror indicated that the catalog is on file in your buying office, have you verified that it is? 4. Did the offeror provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, and reseller? 5. Do the discount policies and price lists submitted by the offeror appear valid based on your knowledge of the offeror and market? 6. For each catalog item with an extended item price (not unit price) that exceeds the established sampling threshold: a. Is the item the same as or sufficiently similar to the catalog priced commercial item so that any difference in prices can be identified and justified without resorting to cost analysis? b. Did the offeror provide acceptable evidence of substantial sales to the general public? c. Did the offeror satisfactorily explain the basis of each offered price and its relationship to the established catalog price? d. When substantial general public sales have also been made at prices other than catalog or price list prices, did the offeror satisfactorily explain how the proposed price relates to the price of recent sales in quantities similar those proposed? 7. If the Government examined the offeror's records, did the examination verify the information provided by the offeror?	Except the offeror(s) from submitting cost or pricing data.

3.2.2.1 Excepting an Offeror Based on Established Catalog Pricing (cont)

DECISIONS EXCEPTING OFFEROR(S) FROM SUBMITTING COST OR PRICING DATA	
If...	**Then...**
You answer “NO” to any part of the SEVEN questions above and you feel that the offeror may have additional information that will change your answer to “YES”....	Require the offeror to provide the necessary information.
You answer “NO” to any part of the SEVEN questions above and the offeror cannot or will not provide the additional information that you need to change your answer to “YES”....	Consider other possibilities for exception.
You answer “NO” to any part of the SEVEN questions above, the offeror cannot or will not provide the additional information that you need to change your answer to “YES,” and no other exception or waiver applies....	Require the offeror to: 1. Submit cost or pricing data. 2. Provide a Certificate of Current Cost or Pricing Data after agreement on contract price.

3.2.2.2 Excepting an Offeror Based on Market Pricing

Established Market Price

FAR 15.804-1(b)(2)(ii)

An established market price is a price that is established in the course of ordinary and usual trade between buyers and sellers free to bargain and that can be substantiated by data from sources independent of the offeror.

Offeror Market Pricing Information

FAR 15.215-41(a)(1)(iii)
FAR 15.215-41(a)(1)(iii)

When an offeror requests an exception based on market pricing, the offeror must (as a minimum):

- Include the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts.
- Describe the nature of the market.
- Demonstrate that the supply or service being purchased is the same as or similar enough to the market priced commercial item so that any difference in prices can be identified and justified without resorting to cost analysis.
- Submit data supporting substantial sales to the general public.

3.2.2.2 Excepting an Offeror Based on Market Pricing (cont)

Exception Decision

FAR 15.804-1(b)(2)

Use the following decision table to determine if you should except an offeror from a requirement for cost or pricing data based on market pricing.

DECISIONS EXCEPTING OFFEROR(S) FROM SUBMITTING COST OR PRICING DATA	
If...	**Then...**
You can answer “YES” to ALL SEVEN of the following questions: 1. Did the offeror request an exception from cost or pricing data requirements? 2. Did the offeror include the source and date or period of the market quotation or other basis used to identify the market price, the base amount, and applicable discounts? 3. Did the offeror describe the nature of the market (e.g., retail, wholesale, distributor)? 4. Is the supply or service being purchased the same as or sufficiently similar to the market priced commercial item so that any difference in prices can be identified and justified without resorting to cost analysis? 5. Did the offeror provide adequate evidence supporting substantial sales by the offeror or other firms to the general public at the market price? 6. Did the offeror provide a reasonable rationale for any differences between the market price and the price offered? 7. If the Government examined the offeror’s records, did the examination verify the information provided by the offeror?	Except the offeror(s) from submitting cost or pricing data.
You answer “NO” to any of the SEVEN questions above any you feel that the offeror may have additional information that will change your answer to “YES”....	Require the offeror to provide the additional information required.
You answer “NO” to any of the SEVEN questions above and the offeror cannot or will not provide the additional information that you need to change your answer to “YES,”	Consider other possibilities for exception or a waiver.
You answer “NO” to any of the SEVEN questions above and the offeror cannot or will not provide the additional information that you need to change your answer to “YES”....	Require the offeror to: 1. Submit cost or pricing data. 2. Provide a Certificate of Current Cost or Pricing Data after agreement on contract price.

3.2.3 Excepting an Offeror Based on Regulated Pricing

General Policy FAR 15.804-1(a)(iii) FAR 15.804-1(b)(3)	Except offerors from submitting cost or pricing data, if you determine that the proposed prices are prices set by law or regulation.
Offeror Information on Prices Set by Law or Regulation FAR 15.215-41(a)(1)(iv) FAR 15.215-42(a)(1)(iv)	When an offeror requests an exception because prices are set by law or regulation, the offeror must (as a minimum): • Identify the law or regulation that establishes the price offered. • If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, the offeror must attach a copy of the controlling document, unless it was previously submitted to the contracting office.
No Provision for Based-On Exception	To apply this exception, the price of the item that you are acquiring must be set by law or regulation. There is no provision for using this exemption for items that are similar to the items that are priced by law or regulation.

3.2.3 Excepting an Offeror Based on Regulated Pricing (cont)

Exception Decision

FAR 15.804-1(b)(3)

Use the following decision table to determine if you should except an offeror from a requirement for cost or pricing data based on prices set by law or regulation.

DECISIONS EXCEPTING OFFEROR(S) FROM SUBMITTING COST OR PRICING DATA	
If...	**Then...**
You can answer "YES" to ALL FIVE of the following questions: 1. Did the offeror request an exception from cost or pricing data requirements? 2. Did the offeror identify the law or regulation establishing the price offered? 3. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, did the offeror attach a copy of the controlling document? 4. If the offeror asserted that copies of the law, periodic rulings, review, or other documents are on file in the contracting office, have you verified that they are on file? 5. If the Government examined the offeror's records, did the examination verify the information provided by the offeror?	Except the offeror(s) from submitting cost or pricing data.
You answer "NO" to any of the FIVE questions above any you feel that the offeror may have additional information that will change your answer to "YES"....	Require the offeror to provide the additional information required.
You answer "NO" to any of the FIVE questions above and the offeror cannot or will not provide the additional information that you need to change your answer to "YES"...	Consider other possibilities for exception.
You answer "NO" to any of the FIVE questions above and the offeror cannot or will not provide the additional information that you need to change your answer to "YES"....	Require the offeror to: 1. Submit cost or pricing data. 2. Provide a Certificate of Current Cost or Pricing Data after agreement on contract price.

3.2.4 Excepting an Offeror Based on Commercial Item Pricing

General Policy

FAR 15.804-1(b)(4)

When you are acquiring a commercial item and you do not have sufficient information to support an exception to cost or pricing data requirements using the catalog prices, market prices, or prices set by law or regulation exceptions, grant a commercial item exception if you can obtain information on prices at which the same or similar items have been sold in the commercial market that is adequate for evaluating price reasonableness using price analysis.

Commercial Item

FAR 2.101

A commercial item is:

1. Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that has been sold, leased, or licensed to the general public; or, offered for sale, lease, or license to the general public;
2. Any item that evolved from an item described in Paragraph 1 through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
3. Any item that would satisfy a criterion expressed in Paragraphs 1 or 2 of this definition, but for:
   - Modifications of a type customarily available in the commercial marketplace; or
   - Minor modifications of a type not customarily available in the commercial marketplace made to meet Government requirements. A "minor" modification is any modification that does not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. When determining whether a modification is minor consider the value and size of the modification and the comparative value and size of the final product. Use dollar values and percentages as guideposts, but they are not conclusive evidence that a modification is minor;
4. Any combination of items meeting the requirements of Paragraphs 1, 2, 3, or 5 of this definition that are of a type customarily combined and sold in combination to the general public;

3.2.4 Excepting an Offeror Based on Commercial Item Pricing (cont)

Commercial Item (cont)

5. Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in Paragraphs 1, 2, 3, or 4 above, and if the source of such services:
   - Offers such services to the general public and the Government contemporaneously and under similar terms and conditions; and
   - Offers to use the same work force for providing the Government with such services as the source uses for providing such services to the general public;
6. Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;
7. Any item, combination of items, or service referred to in Paragraphs 1 through 6, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or
8. A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

Nondevelopmental Item

FAR 2.101

Nondevelopmental item is:

1. Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
2. Any item described in Paragraph 1 of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or
3. Any item of supply being produced that does not meet the requirements of Paragraph 1 or 2 solely because the item is not yet in use.

3.2.4 Excepting an Offeror Based on Commercial Item Pricing (cont)

Offeror Commercial Item Information

FAR 15.215-41(a)(1)(v)
FAR 15.215-42(a)(1)(v)(B)
FAR 15.804-5(b)

Before you can grant an exception based on commercial item pricing, you must obtain information on prices at which the same or similar items have been sold in the commercial market that is adequate for evaluating the reasonableness of offered prices using price analysis alone. As you attempt to obtain this pricing information, consider the guidelines below:

- Seek to obtain the information necessary for evaluating price reasonableness through price analysis from the offeror. Most offerors will provide this information as part of their offer and request for exception.
- If the necessary information is not available from the offeror, seek to obtain it from another source or sources.
- Limit requests for commercial item sales data to data for the same or similar items during a relevant time period.
- To the maximum extent practicable, limit the scope of any request for information from the offeror to include only information that is in the form regularly maintained by the offeror in commercial operations.
- Do not disclose, under the Freedom of Information Act, any information that you obtain to support a commercial item exception.

Commercial Item Audit

FAR 52.215-41(a)(2)
FAR 52.215-42(a)(2)

The Government has the Right to Examine Records Before Award

The same preaward right to verify the request for an exception and price reasonableness that applies to the catalog price, market price, and price set by law or regulation exceptions also applies to the commercial item exception.

FAR 52.215-43

In addition, FAR 52.215-43, Audit-Commercial Items, gives the contracting officer and authorized representatives the right to examine the accuracy of the information on prices at which the same or similar items have been sold in the commercial market after contract award. Access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the marketplace. This right expires two years after the date of contract award, or two years after the date of any modification to the contract, with respect to which this information is provided.

3.2.4 Excepting an Offeror Based on Commercial Item Pricing (cont)

Exception Decision

FAR 15.804-1(b)(4)

Use the following decision table to determine if you should except an offeror from a requirement for cost or pricing data based on commercial item pricing.

DECISIONS EXCEPTING OFFEROR(S) FROM SUBMITTING COST OR PRICING DATA

If...	Then...
You can answer "YES" to ALL SIX of the following questions: 1. Did the offeror request an exception from cost or pricing data requirements? 2. Is the item a commercial item, as defined in FAR 2.101? 3. Did the offeror or other sources provide information on prices at which the same or similar items have been sold in the commercial market? 4. Was the information provided by the offeror or other sources for the same or similar items during a relevant time period? 5. Is the information provided by the offeror or other sources adequate for evaluating, through price analysis, the reasonableness of the offered price? 6. If the Government examined the offeror's records, did the examination verify the information provided by the offeror?	Except the offeror(s) from submitting cost or pricing data.
You answer "NO" to any of the SIX questions above any you feel that the offeror may have additional information that will change your answer to "YES"....	Require the offeror to provide the additional information required. To the maximum extent practicable, limit the scope of the request to include only information that is in the form regularly maintained by the offeror in commercial operations.
You answer "NO" to any of the SIX questions above and the offeror cannot or will not provide the additional information that you need to change your answer to "YES,"	Consider other possibilities for exception.
You answer "NO" to any of the SIX questions above and the offeror cannot or will not provide the additional information that you need to change your answer to "YES"....	Require the offeror to: 1. Submit cost or pricing data. 2. Provide a Certificate of Current Cost or Pricing Data after agreement on contract price.

3.2.5 Excepting an Offeror Based on Modification of a Commercial Item

General Exceptions

FAR 804-1(a)

As described above, exceptions for catalog prices, market prices, prices set by law or regulation, or commercial item prices also apply to contract modifications.

Commercial Item Contract Modification Exception

FAR 804-1(a)(4)

In addition to the general exceptions above, except modifications to commercial items for cost or pricing data requirements, if:

- The basic contract was awarded without the submission of cost or pricing data because the action was granted an exception from cost or pricing data requirements based on catalog prices, market prices, or prices set by law or regulation; and
- The modification does not change the contract to a contract for the acquisition of other than a commercial item.

FAR 804-1(b)(6)

However, if the modification to a contract changes the nature of the work under the contract either by a change to the commercial item or by the addition of other noncommercial work, you are not prohibited from obtaining cost or pricing data for the added work.

Offeror Commercial Item Information

FAR 15.215-42(a)(1)(v)(A)

When requesting a commercial item contract modification exception, the contractor should provide information to establish that the modification does not change the contract from a contract for the acquisition of a commercial item to a contract for the acquisition of an item other than a commercial item.

However, it may not be necessary for the contractor to provide additional information if you can determine from other information that the contract modification does not change the contract from a contract for the acquisition of a commercial item to a contract for the acquisition of an item other than a commercial item.

3.2.5 Excepting an Offeror Based on Modification of a Commercial Item (cont)

Exception Decision

FAR 15.804-1(b)(6)

Use the following decision table to determine if you should except an offeror from a requirement for cost or pricing data based on a commercial item contract modification exception.

DECISIONS EXCEPTING OFFEROR(S) FROM SUBMITTING COST OR PRICING DATA	
If...	**Then...**
You can answer "YES" to the FIRST QUESTION and "NO" to the OTHER TWO questions in this portion of the table: 1. Was the original contract or subcontract except from submission of cost or pricing data based on catalog price, market price, or price set by law or regulation? 2. Does the modification change the item from a commercial item to a noncommercial item? 3. Does the modification add noncommercial work?	Except the offeror(s) from submitting cost or pricing data.
You cannot except the offeror(s) from submitting cost or pricing data based on your responses to the THREE questions above....	Consider other possibilities for exception.
You cannot except the offeror(s) from submitting cost or pricing data based on your responses to the THREE questions above and no other exception or waiver applies...	Require the offeror to: 1. Submit cost or pricing data. 2. Provide a Certificate of Current Cost or Pricing Data after agreement on contract price.

3.2.6 Waiver of the Requirement

General Policy

FAR 15.804-1(a)(3)

In exceptional cases, the head of the contracting activity may, without power of delegation, waive the requirement for submission of cost or pricing data. The authorization for the waiver and the reasons for granting it must be in writing. Consider requesting a waiver, when no other exception applies but you can determine that the offered price is fair and reasonable without submission of cost or pricing data.

For example, consider requesting a waiver when an offeror has provided cost or pricing data for previous production buys, if you feel that the data already provided, combined with updated information, are sufficient for you to determine price reasonableness.

Waiver and Lower-Tier Sub-contractors

FAR 15.804-1(a)(3)

Waivers from submission of cost or pricing data granted to a prime contractor or higher-tier subcontractor do not automatically flow down to lower-tier subcontractors. When the head of the contracting activity waives the requirement for submission of cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to provide cost or pricing data. Consequently, award of any lower-tier subcontract expected to exceed the cost or pricing data threshold requires the submission of cost or pricing data unless an exception otherwise applies to the subcontract.

3.2.6 Waiver of the Requirement (cont)

Exception Decision

FAR 15.804-1(b)(5)

Use the following decision table to determine if you should except an offeror from a requirement for cost or pricing data in an exceptional situation.

DECISIONS EXCEPTING OFFEROR(S) FROM SUBMITTING COST OR PRICING DATA	
If...	**Then...**
You can answer "YES" to ALL Four of the following questions: 1. Have you determined that the offeror does not qualify for any of the other exceptions provided under FAR 15.804-1(a). 2. Can you determine that the price is fair and reasonable without requiring cost or pricing data? 3. Have the reasons for the waiver been documented in writing? 4. Has the head of the contracting activity authorized the waiver in writing?	Waive the requirement for the offeror to submit cost or pricing data.
You answer "NO" to any of the questions above and the offeror cannot or will not provide the additional information that you need to change your answer to "YES"....	Require the offeror to: 1. Submit cost or pricing data. 2. Provide a Certificate of Current Cost or Pricing Data after agreement on contract price.

3.3 Determining Whether to Require Pricing Information After Receipt of Offers

General Policy

FAR 15.804-5

You can require an offeror to submit cost or pricing data or information other than cost or pricing data at any time prior to contract award. After offers are received, if you conclude that there is insufficient information available to determine price reasonableness and none of the cost or pricing data exceptions applies, require the offeror to submit cost or pricing data. If you require additional information other than cost or pricing data, to the maximum extent practicable obtain the additional information from sources other than the offeror. However, if you need information from the offeror, obtain the information from the offeror.

Cost or Pricing Data

You did not require the offeror to submit cost or pricing data because you expected adequate price competition, or because your estimated contract price did not exceed the cost or pricing data threshold. Now you find that you have only one offer and the offered price exceeds the cost or pricing data threshold.

FAR 15.804-1(b)

Before you require the offeror to submit cost or pricing data, remember that you may still be able to determine that the offered prices are based on adequate price competition if one of the following situations exists (See Section 3.2.1):

- There was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors, competing independently, would submit priced offers responsive to the solicitation's expressed requirement, even though only one offer was received from a responsible, responsive offeror and:
  - ◊ Based on the offer received, you can reasonably conclude that the offer was submitted with the expectation of competition (e.g., circumstances indicate that the offeror believed that at least one other offeror was capable of submitting a meaningful, responsive offer; and the offeror had no reason to believe that other potential offerors did not intend to submit an offer); and
  - ◊ The determination that the proposed price is based on adequate price competition and is reasonable is approved at a level above the contracting officer; or

3.3 Determining Whether to Require Pricing Information After Receipt of Offers (cont)

Cost or Pricing Data (cont)

- Price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items purchased in comparable quantities, under comparable terms and conditions under contracts that resulted from adequate price competition.

If you cannot except the offeror based on adequate price competition, require the offeror to submit cost or pricing data.

FAR 15.804-1(d)

Once you require the offeror to submit cost or pricing data, the offeror can still request an exception based on one of the other exceptions to the requirement for cost or pricing data:

- Federal Supply Service or Information Technology Service Multiple Award Schedule Prices
- Established catalog prices;
- Established market prices;
- Prices set by law or regulation;
- Commercial item pricing information adequate to support price analysis;
- Prices for a contract modification when the original contract price was except from cost or pricing data requirements, as long as the modification does not change the item from a commercial item to a noncommercial item.
- Waiver by head of the contracting activity without power of delegation.

3.3 Determining Whether to Require Pricing Information After Receipt of Offers (cont)

Cost-Related Information Other Than Cost or Pricing Data

You may find that you are not sure that an offeror understands all elements of the Government requirement. As a result, you believe that the offer may be over or under-priced.

In such situations, you may require specific additional information about offeror costs to assure that the offeror actually understands solicitation and contract requirements. Do not request cost information other than cost or pricing data routinely. Limit requests to those situations in which such data are necessary to assure a fair and reasonable price or verify that both parties understand all requirements of the contract that affect the cost of doing the work. For example, you may need to establish whether an offeror properly considered all specification requirements in developing the proposed price. To evaluate whether the offeror considered all requirements, you should identify and request information related to the cost of meeting those requirements.

Only require the cost information other than cost or pricing data that are necessary to determine price reasonableness. For example, you are only concerned about material costs, do not require the offeror to also provide information on labor costs.

Price-Related Information Other Than Cost or Pricing Data

The offeror may appear to qualify for an exception to submitting cost or pricing data, but you still have questions about the reasonableness of prices because Government requirements are different than commercial prices. For example, most commercial sales are for 10 units or less, but the Government is acquiring 95 units.

You may need additional information on one or more of the following before you can make a determination on price reasonableness:

- Marketing system.
- Services normally provided.
- Normal quantity per order.
- Annual volume of sales to largest customers.
- Differences between major classes of customers.
- Information regarding past contracts.

Chapter Vignette (cont)

Widget Acquisition (cont)

Following the steps outlined in this chapter, you have determined that cost or pricing data are required for purchases in excess of the cost or pricing data threshold unless an exception to the requirement applies.

Because you expect competition from six independent sources, you have determined to except offerors from the requirement to submit cost or pricing data.

Finally, you determine that other price-related data are not required because you have a known requirement and a good purchase history, and you expect strong price competition.

Developing Award Criteria for Pricing CHAPTER 4

Chapter Vignette

Widgets Acquisition (cont)

As you continue to prepare the solicitation for your widget acquisition, you must determine what factors you will consider in making your award decision. Your supervisor suggests that you look at the last solicitation to determine what factors have been considered in the past.

When you look at the solicitation, you note that the award criteria state that "an aggregate award will be made to the low, responsible offeror whose offer is most advantageous to the Government." Most of the solicitations that you have seen use this same wording, so you think that the criteria are probably acceptable, but you wonder if there are other criteria that might be used to obtain a better business deal for the Government.

The two price-related decisions that seem most important in preparing for the award decision are: identifying what possible award combinations will be considered in making contract award and identifying the price-related factors that will be used in offer evaluation.

Learning Objectives

At the End of This Chapter

At the end of this chapter, you will be able to:

Classroom Learning Objective 4/1
Identify different methods of grouping solicitation items for contract award and determine which should be used in a particular acquisition situation.

Classroom Learning Objective 4/2
Identify price-related factors that may be applied in the contract award decision and determine which should be used in a particular acquisition situation.

4.0 Introduction

In This Chapter

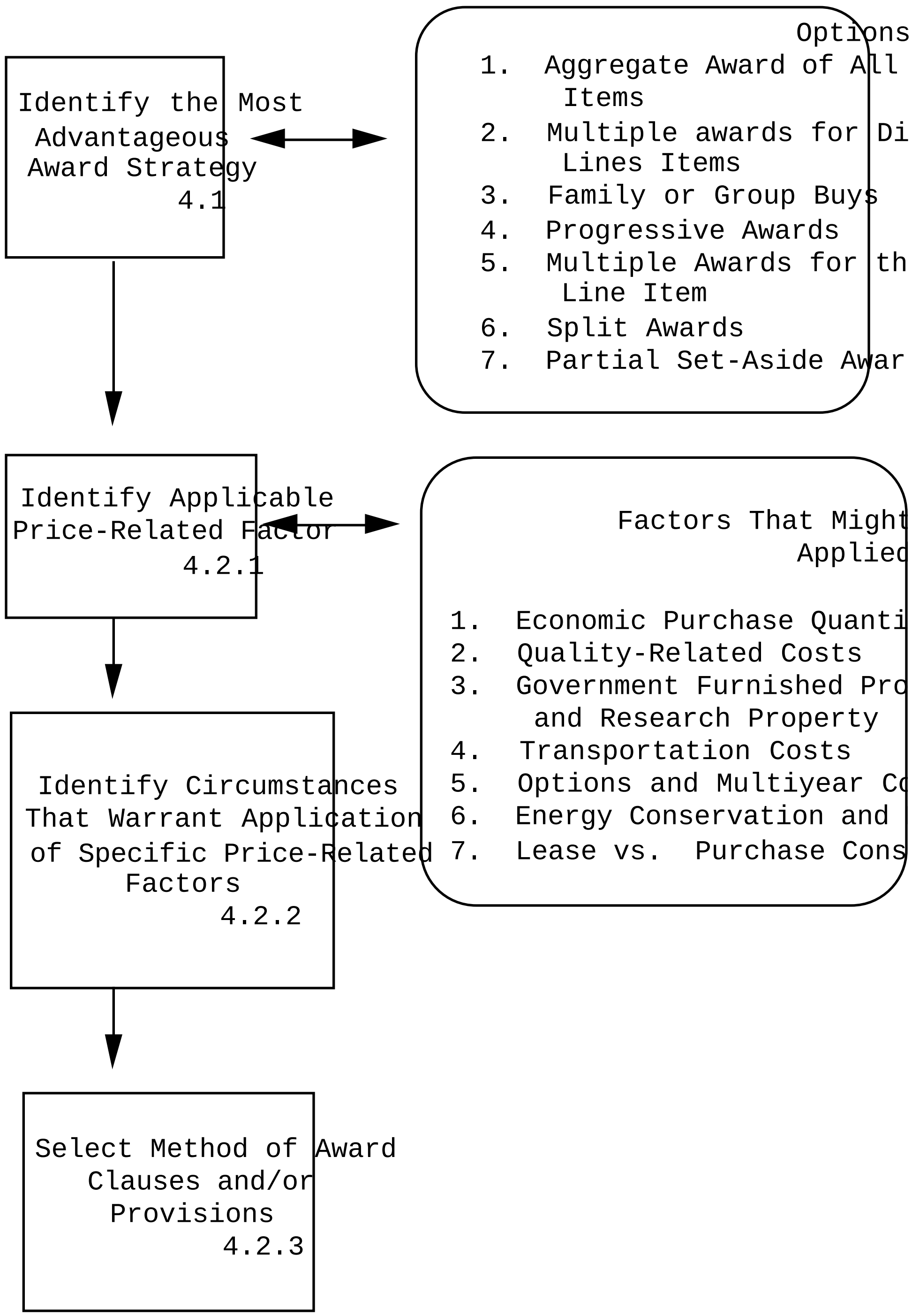
This chapter covers two price-related criteria of particular importance in attracting competition and obtaining fair and reasonable contract prices. These are selecting possible award combinations and selecting price-related factors for award. The specific steps you will follow are shown below:

SECTION	DESCRIPTION	SEE PAGE
4.0	Introduction	4-3
4.1	Selecting Possible Award Combinations	4-7
	4.1.1 Aggregate Award of All Line Items to One Contractor	4-9
	4.1.2 Multiple Awards for Different Line Items	4-10
	4.1.3 Family or Group Buys	4-11
	4.1.4 Progressive Awards for Portions of Total Line Item Requirement	4-12
	4.1.5 Multiple Awards for the Same Line Item	4-13
	4.1.6 Split Awards	4-15
	4.1.7 Partial Set-Aside Awards	4-16
4.2	Selecting Price-Related Factors for Award	4-17
	4.2.1 Identify Applicable Price-Related Factors	4-19
	4.2.2 Identify Formula(s) for Evaluation	4-25
	4.2.3 Select Method of Award Clauses or Provisions	4-32
	4.2.4 Transportation Costs	4-35
	4.2.5 Options & Multiyear Contracting	4-39
	4.2.6 Life-Cycle Costs	4-44
	4.2.7 Energy Conservation & Efficiency	4-48
	4.2.8 Lease vs. Purchase Considerations	4-50

4.0 Introduction (cont)

Procedural Steps

The following figure shows the sequence of events or steps that you should follow in selecting price-related factors for award.



4.0 Introduction (cont)

Item Grouping and Price-Related Factors for Award

This chapter will outline seven different ways to group items for contract award and eight different price-related factors that you should consider in appropriate award situations. For each method of grouping items for contract award, the text provides a summary table that describes the method, when it should be considered for use, and an example of appropriate award criteria. For each price-related factor, a summary table that provides information on when you should consider factor use, data sources, and the accompanying price objective. In most cases, there will also be an example of contract award criteria developed to consider that particular factor.

Points to Consider in Developing Award Criteria

Consider the following points as you develop award criteria:

- **Evaluate the purchase situation and Government requirements.** Many people see pricing as "number crunching." While pricing does involve numbers, there is much more to pricing than that. You need product knowledge to understand what numbers are important and how these relate to the acquisition decision. Remember that each acquisition situation has its own particular requirements. Carefully examine all requirements before selecting contract award criteria.
- **Identify appropriate item groupings for award.** Consider both the product that you are acquiring and the potential offerors. Use market research to learn about customary practices used by Government and industry.
- **Identify appropriate price-related factors.** When particular price-related factors fit the acquisition situation, they should be applied. However, they should not be forced into situations where they do not apply. Often, more than one factor may apply to a particular situation. If you use more than one price-related factor to arrive at an award decision, try to ensure that the analysis does not become so complex that offerors may no longer trust the results of the evaluation process.
- **Use objective criteria whenever they are appropriate.** Usually objective (quantitative) evaluation criteria are preferable to subjective criteria. For example, it is easier to state that a winning proposal had the lowest evaluated price than it is to explain to an unsuccessful offeror that the winning proposal offered a better combination of price and quality.

4.0 Introduction (cont)

Points to Consider in Developing Award Criteria (cont)

- **Consider the risk of deceptive offers.** Because of the risk of deceptive offers, you must consider how an offeror might attempt to “game” the evaluation process. Occasionally, if you do not take adequate care in developing criteria for price evaluation, offerors may take the opportunity to "game" or provide deceptive data in their proposals.

  For example: If option prices are not considered in the contract award decision, and competition will be significantly reduced after award of the basic contract, an offeror may offer an extremely low price on the basic contract and much higher prices on the options. You must determine whether the evaluated price is reasonable, given all available information about the contract requirement.

- **Assure that you will have the data that you need to evaluate price-related factors in making the award decision.** Some of the data (such as transportation costs) can be obtained from Government sources. Other data must be provided by the offeror (i.e. shipping points for f.o.b. origin shipments). To assure that the solicitation requires offerors to provide needed data, you must identify and develop evaluation formulas prior to solicitation release. Care must be taken to assure that the formula structure implements the criteria established in the solicitation. When possible, formulas should be validated using test data prior to solicitation release.

- **Assure that the solicitation clearly explains to potential offerors how their offer will be evaluated for award.** You must, as a minimum, explain the potential item groupings for contract award and the price-related factors that you will consider in offer evaluation. Review the sample provisions in this chapter and consider how you could use or modify these provisions in developing award criteria.

- **Remember, do not make award criteria unnecessarily complex.** Needlessly complex criteria increase the possibility of deceptive offers. They also increase the possibility of protest by offerors who are confused by the evaluation criteria or feel that the award decision did not adequately consider all identified criteria.

4.1 Selecting Possible Award Combinations

Overview

In This Section

This section identifies different methods of grouping solicitation items for contract award and elements that you should consider as you determine which method to use in the award criteria for a particular solicitation:

TOPIC	SEE PAGE
4.1.1 Aggregate Award of All Line Items to One Offeror	4-9
4.1.2 Multiple Awards for Different Line Items	4-10
4.1.3 Family or Group Buys	4-11
4.1.4 Progressive Awards for Portions of Total Line Item Requirement	4-12
4.1.5 Multiple Awards for the Same Line Item	4-13
4.1.6 Split Awards	4-15
4.1.7 Partial Set-Asides	4-16

4.1 Overview (cont)

Identify Most Advantageous Award Strategy

As you prepare any solicitation, you must always clearly define the award criteria that you will use to determine the grouping and number of possible award combinations. When you solicit offers to provide one unit of a single product, only one firm can receive a contract award to provide that product unit. However, as the number of different items and the number of units of each item increase, the number of award possibilities also increases. Theoretically, the award possibilities could become almost infinite.

There is no one method of grouping items for contract award that will always result in effective competition and reasonable prices. Each method described in this section can improve competition and lower prices when used in the appropriate acquisition situation.

4.1.1 Aggregate Award for All Line Items to One Contractor

Aggregate Awards

The table below presents descriptions and pricing considerations for making aggregate awards.

AGGREGATE AWARDS	
Description	**Use When...**
Award to the single responsive, responsible offeror whose offer is most advantageous to the Government.	Award on an "all or none" basis would probably result in a total price that is lower than the sum of low offers from a line-item by line-item competition. This method would be especially appropriate when firms regularly sell the contract items as an integrated package to realize economies of scale that are not possible when selling each component independently. For example, many firms offer computer systems that are cheaper than buying the separate components (e.g. disk drives, monitors, video cards, etc.) one by one.
Example of a Method of Award Provision: Award will be made in the aggregate for all items. The low aggregate offeror will be determined by multiplying the unit price submitted on each item by the quantity specified, and adding the resultant extensions. In order to qualify for an award, prices must be submitted on all items.	

4.1.2 Multiple Awards for Different Line Items

Multiple Awards for Different Line Items

FAR 52.214-22
FAR 52.215-34

The table below presents descriptions and pricing considerations for making multiple awards for different line items.

MULTIPLE AWARDS (Line Item by Line Item)	
Description	**Use When.**
Base award(s) on the line items or groups of line items that provide the lowest aggregate cost to the Government, including the assumed administrative costs for awarding and administering each contract.	Awarding line-item by line-item is likely to result in a lower total price than awarding on an aggregate "all or none" basis. This method would be especially appropriate if prospective offerors are likely to perceive no significant economies of scale from an aggregate award. For example, some firms sell may computer peripherals at much lower prices than are typically offered by computer manufacturers. However, such firms would not be able to compete to provide the peripherals if the RFP requires award based on the aggregate price for all line items (including the peripherals) that comprise a microcomputer system.
Example 1 of a Method of Award Provision: Award will be made on an item-by-item basis.	
Example 2 of a Method of Award Provision: (a) The Government intends to make awards on an item-by-item basis. However, if an "all or none" or similar type offer is received, offers on the items to which the "all or none" offer applies will be evaluated and award made as prescribed in Paragraph (b). (b) The lowest acceptable offer exclusive of the "all or none" offer will be selected with respect to each item (or group of items when the solicitation provides for group awards) and the total cost of all items thus determined shall be compared with the total of the lowest acceptable "all or none" offer. Award will be made to result in the lowest total cost to the Government.	

4.1.3 Family or Group Buys

Family or Group Buys

FAR 52.214-22 FAR 52.215-34

The table below presents descriptions and pricing considerations for family or group buys.

FAMILY OR GROUP BUYS	
Description	**Use When...**
Award for identified families, or groups, of line items that provide the lowest aggregate cost to the Government, including the assumed administrative costs of awarding each contract.	Offerors are likely to submit a total price for a group of line items that would be lower than the sum of their offers on the individual items. This method would be especially appropriate if offerors are likely to perceive significant economies of scale from being awarded all line items in a particular group as a package. For example, firms that manufacture ribbons for typewriters also tend to manufacture ribbons for dot matrix printers. In this case, line items for different ribbons might be included in a single family of items.
Example of a Method of Award Provision: Award will be made in the aggregate for each identified group of items. The low offeror for the group will be determined by multiplying the unit price submitted on each item in the group by the estimated quantity specified, and adding the resultant extensions. In order to qualify for an award on a group of items, an offeror must submit prices for each item within the group.	

4.1.4 Progressive Awards for Portions of Total Line Item Requirement

Progressive Awards

The table below presents descriptions and pricing considerations for making progressive awards.

PROGRESSIVE AWARDS (Each Line Item)	
Description	**Use When...**
If the offeror with lowest evaluated unit price for a line item offers less than the total quantity required by the Government, award up to the quantity offered. Follow the same procedure with the next lowest evaluated unit price and continue until the entire line item requirement is awarded.	Some of the potential competitors do not have the capability to supply the entire quantity required by the Government, but might be in a position to offer the lowest price for some of the needed units. For example, some firms specialize in reconditioning laser printer cartridges and offer those cartridges at a fraction of the price of new units. If such a firm did not have enough reconditioned cartridges to fill the entire requirement, a progressive award would allow the firm to compete for the quantities that it can supply—with other firms competing for the balance of the requirement. Before using, assure that you can fund more that one contract for a single line item.

Example of a Method of Award Provision:

a) Award will be made on an item-by-item basis to the lowest responsive offerors up to their stated monthly quantity allocations. Awards to any offeror will not be made for quantities in excess of the firm's stated monthly quantity allocation.

b) If the low responsive offeror offers a monthly quantity allocation which, when multiplied by the number of months representing the contract period, totals less than the Government's estimated annual requirements, the Government may make progressive awards to the extent necessary to meet its estimated annual requirements. In such cases, awards will be made to the low responsive offeror up to that offeror's stated monthly quantity allocation, and then progressively to other offerors to the extent necessary to cover all Government requirements. Within the limits prescribed by the offeror, the Government will apply offeror's monthly quantity allocation to any items offered, as the Government's interests require.

c) If progressive awards are made, orders will be placed first with the contractor offering the lowest price on each item normally up to the contractor's monthly quantity allocation and then in the same manner, successively to other contractors. However, to avoid the placement of unduly small orders or the splitting of a single requirement between two contractors, the Government reserves the right to place orders with back-up contractors whenever the orders placed with lower priced contractors equal or exceeds 95 percent of their monthly quantity allocation for the item or group of items being ordered. In no case will orders be placed with any contractor in excess of his monthly quantity allocation.

4.1.5 Multiple Awards for the Same Line Item

Multiple Awards for the Same Line Item

FAR 16.504(c)

The table below presents descriptions and pricing considerations for making multiple awards for the same line item under an indefinite quantity contract.

<table>
<tr><th colspan="2">MULTIPLE AWARDS
(Estimated Requirements for Individual Line Items)</th></tr>
<tr><th>Description</th><th>Use When...</th></tr>
<tr><td>Make multiple awards for the same indefinite requirement in situations where multiple firms are capable of delivering similar, but not identical, products to meet the needs of the Government, and selectivity is needed on the part of the ordering offices. Ordering offices then have the choice of selecting the product and firm that best meet their needs.</td><td>Appropriate to meet the needs of the Government. If you are using an indefinite quantity contract for:
• Supplies or services other than advisory and assistance services, FAR requires you to give preference to making multiple awards, unless you determine that a single award is appropriate.
• Advisory and assistance services that will not exceed three years and $10 million, including all options, you may give preference to making multiple awards.
• Advisory and assistance services that will exceed three years and $10 million, you must give preference to making multiple awards, unless:
◊ The contracting officer, or other person designated by the agency head, determines in writing prior to solicitation that the services are so unique or highly specialized that it is not practical to award more than one contract. This determination may also be appropriate when contract tasks are so integrally related that only a single contractor can reasonably perform the work, or
◊ The contracting officer, or other person designated by the agency head, determines in writing, after evaluation of offers, that only one offeror is capable of providing the services required, or
◊ You only receive one offer.</td></tr>
</table>

Continued on next page

4.1.5 Multiple Awards for the Same Line Item

Multiple Awards for the Same Line Item (cont)

The table below continues the descriptions and pricing considerations for making multiple awards for the same line item under an indefinite quantity contract.

MULTIPLE AWARDS (cont) **(Estimated Requirements for Individual Line Items)**
Example 1 of a Method of Award Provision: Single or Multiple Awards (Oct 1995) The Government may elect to award a single delivery order contract or task order contract or to award multiple delivery order contracts or task order contracts for the same or similar supplies or services to two or more sources under this solicitation.
Example 2 of a Method of Award Provision: Multiple Awards for Advisory and Assistance Services (Oct 1995) The Government intends to award multiple contracts for the same or similar advisory and assistance services under this solicitation unless the Government determines, after evaluation of offers, that only one offeror is capable of providing the services at the level of quality required.

4.1.6 Split Awards

Split Awards

The table below presents descriptions and pricing considerations for making split awards.

SPLIT AWARDS (Estimated Requirements for Individual Line Items)	
Description	**Use When...**
Award of requirements for an individual line item may be split between two or more sources. The size of each portion of the split or a method for calculating the split should be established in the solicitation. Every possible effort should be made to assure that any amount awarded is an economic production quantity.	1. Multiple sourcing is necessary (under the authority of FAR 6.202) to maintain competitive sources for a product that would otherwise be available only from one source. The split may be on a percentage share basis, with the most favorable offer receiving the largest percentage of the requirement. 2. Multiple source development will be facilitated at relatively low risk to the Government. For example, a partial set-aside, as described in Section 4.1.7, is a form of split award.
Example of Method of Award Provision: The Government intends to make split awards from this solicitation. Sixty percent of the total quantity will be awarded to the offeror that the Government determines to have submitted the proposal that offers the best value to the Government, considering primarily technical scores and secondarily, offered prices. Forty percent will be awarded to the remaining competitor provided that the technical evaluation determines that the technical proposal is acceptable and the offered prices are determined to be fair and reasonable.	

4.1.7 Partial Set-Aside Awards

Partial Set-Aside Awards

FAR 52.219-7

The table below presents descriptions and pricing considerations for making partial set-aside awards.

PARTIAL SET-ASIDE AWARDS	
Description	**Use When...**
A portion of the solicitation requirement is set-aside for small business. Any small business can submit an offer to provide the set-aside portion, the non-set-aside portion, or both. Note: If a small business is awarded the non-set-aside portion of the requirement, do not attempt to negotiate a lower price with the firm for the set-aside portion. However, accept voluntary reductions.	All of the following are true: • A total set-aside is not appropriate. • The requirement is severable into two or more economic purchase lots. • One or more small businesses have the capability to satisfy the set-aside requirement. • The acquisition is not made under small purchase procedures. Do not use set-asides in situations where it is not reasonable to expect that the set-aside will be awarded at a fair and reasonable price.
Method of Award Provision Requirements: The set-aside portion of the requirements must be specifically identified. Any acceptable method of award may be used to award the set-aside portion, including aggregate, line item by line item, or family buys. Solicitations must include FAR 52.219-7, Notice of Partial Small Business Set-Aside.	

4.2 Selecting Price-Related Factors For Award

Overview

In this Section

In this section, you will learn about specific price-related factors that can be used to adjust offered prices to consider purchase-related costs to the Government.

TOPIC	SEE PAGE
4.2.1 Application of the Buy American Act	4-19
4.2.2 Quality-Related Costs	4-25
4.2.3 Government Furnished Production and Research Property	4-32
4.2.4 Transportation Costs	4-35
4.2.5 Options and Multiyear Contracting	4-39
4.2.6 Life-Cycle Costs	4-44
4.2.7 Energy Conservation and Efficiency	4-48
4.2.8 Lease vs. Purchase Considerations	4-50

4.2 Overview (cont)

Identify Price-Related Factors

As you prepare any solicitation, you must identify the price-related factors to be considered in the contract award criteria**. You should assure that contract award criteria consider all price-related factors that will have a significant, quantifiable effect on the total cost of the acquisition**. The following list is not meant to be an exhaustive list of price-related factors that you could consider during offer evaluation. However, this list identifies several key price-related factors that may be applicable to your contracting situation:

- Application of the Buy American Act (FAR 25.1 and 25.2)
- Quality-Related Costs (FAR 15.605(b)(1)
- Government Furnished Production and Research Property (FAR 45.2)
- Transportation Costs (FAR 47.3)
- Options and Multiyear Contracting (FAR 17.1 and 17.2)
- Life-Cycle Costs (FAR 7.105)
- Energy Conservation and Efficiency Consideration (FAR 23.2)
- Lease vs. Purchase Considerations (FAR 7.4)

If you identify other price-related factors that may affect the total cost of a particular acquisition, you should consider those factors as you develop your contract award criteria.

4.2.1 Application of the Buy American Act

Buy American Act Requirement

FAR 25.102

The Buy American Act requires that only domestic end products be acquired for public use, except articles, materials, and supplies—

(1) For use outside the United States;

(2) For which the cost would be unreasonable, as determined in accordance with FAR 25.105;

(3) For which the agency head determines that domestic preference would be inconsistent with the public interest;

(4) That are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities, of a satisfactory quality; or

(5) Purchased specifically for commissary resale.

General Implementation

FAR 52.225-3(b)

To implement Buy American Act requirements, insert FAR 52.225-3, Buy American Act--Supplies into any solicitation for supplies, or for services involving the furnishing of supplies, within the United States, unless the solicitation is restricted to domestic end products, the acquisition is made under the European Community Agreement or Trade Agreements Act, or another exception to the Buy American Act applies. This clause requires the contractor to deliver "only domestic end products," except those—

(1) For use outside the United States;

(2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the agency determines that domestic preference would be inconsistent with the public interest; or

(4) For which the agency determines the cost to be unreasonable.

Note that the fourth exception allows you to award to a firm offering a foreign product if the cost of domestic end items is considered unreasonable. FAR 25.105 establishes criteria for determining the low evaluated offer when both domestic and foreign end items have been offered in response to your solicitation. When you insert this provision into a solicitation, assure that you also insert the provision at FAR 52.225-1, Buy American Certificate. This provision requires offerors to identify any offered items that are not known domestic end products.

4.2.1 Application of the Buy American Act (cont)

Determining the Low Offer Under FAR 25.105

FAR 25.105

25.105 Evaluating offers.

(a) Unless the agency head determines otherwise, the offered price of a domestic end product is unreasonable when the lowest acceptable domestic offer exceeds the lowest acceptable foreign offer (see 25.101), inclusive of duty, by—

(1) More than 6 percent, if the domestic offer is from a large business; or

(2) More than 12 percent, if the domestic offer is from a small business concern.

(b) The evaluation in paragraph (a) of this section shall be applied on an item-by-item basis or to any group of items on which award may be made as specifically provided by the solicitation.

(c) If an award of more than $250,000 would be made to a domestic concern if the 12-percent factor were applied, but not if the 6-percent factor were applied, the agency head shall decide whether award to the domestic concern would involve unreasonable cost.

(d) The evaluation in paragraph (a) of this section shall not be applied to offers of Israeli end products or above $50,000 (see 25.402(a)(2)).

(e) The evaluation in paragraph (a) of this section shall not be applied to offers of Canadian end products above $25,000 (see 25.402(a)(3)). For the definition of "Canadian end product," see 25.401.

4.2.1 Application of the Buy American Act (cont)

Distinguishing Domestic From Nondomestic End Products

How can you determine whether an offered product is "domestic" or "foreign" for the purposes of applying the criteria in FAR 25.105? Insert FAR 52.225-1, Buy American Certificate. That provision obliges each offeror to identify any product being offered that is not a known domestic end product:

FAR 52.225-1

BUY AMERICAN CERTIFICATE (DEC 1989)

The offeror certifies that each end product, except those listed below, is a domestic end product (as defined in the clause entitled "Buy American Act—Supplies"), and that components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

Excluded End Products	*Country of Origin*

(List as necessary)

Offerors may obtain from the contracting officer lists of articles, materials, and supplies excepted from the Buy American Act.

(End of provision)

4.2.1 Application of the Buy American Act (cont)

Caveats

FAR 25.103

1. The criteria in FAR 25.105 do not apply to all Federal departments and agencies. The Department of Defense (DoD) and the National Aeronautics and Space Administration (NASA) have determined that it is inconsistent with the public interest to apply the restrictions of the Buy American Act to their acquisitions of certain supplies mined, produced, or manufactured in certain foreign countries.

DFARS 225.105

2. Federal departments and agencies (particularly the Department of Defense) have different criteria for determining when the cost of domestic end items should be considered unreasonable. Check your agency's FAR Supplement before relying on the guidance in FAR 2.1.

FAR 25.400
FAR 52.225-3

3. Note that FAR 52.225-3, Buy American Act—Supplies, does not apply to acquisitions made under the Trade Agreements Act of 1979 and other trade agreements including the:
   - North American Free Trade Agreement (for Canadian and Mexican products),
   - Caribbean Basin Economic Recovery Act,
   - U.S. - Israeli Free Trade Area Agreement, or the
   - Agreement on Civil Aircraft.

FAR 25.108

4. FAR 25.108 contains a long list of articles, materials, and supplies that various agencies have determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. That list is furnished for information only. Again, check your agency's FAR Supplement for guidance on this matter.

FAR 25.102(a)

5. FAR 25.1 contains still other exceptions and qualifications to the general requirements of FAR 25.102(a).

FAR 25.2

6. The policy on construction material is contained in FAR 25.2.

4.2.1 Application of the Buy American Act (cont)

DoD Implementation

DFARS 225.105
DFARS 225.102

If your organization is subject to Defense Federal Acquisition Regulation Supplement (DFARS) coverage, use the procedures in DFARS 225.105 instead of FAR 25.105, to determine when the cost of a domestic end product is unreasonable. Consider recommending a public interest exception when the purposes of the Buy American Act are not served by applying its requirements in a particular acquisition situation. For example, a public interest exception may be appropriate if:

(1) Accepting the low domestic offer will involve substantial foreign expenditures; or

(2) Accepting the low foreign offer will involve substantial domestic expenditures.

DFARS assigns the authority to grant a public interest exception to the:

(1) Head of the contracting activity for acquisitions under $100,000; or

(2) Agency head for acquisitions of $100,000 or more.

Determining the Low Offeror Under DFARS 225.105

DFARS 225.105
DFARS 225.872-1
DFARS 52.225-10

Evaluate offers by adding a 50 percent factor to the price (including duty) for offers from a **nonqualifying** country. **Qualifying** countries (DFARS 225.872-1) are specifically excluded from application of the requirements of the Buy American Act because of the provisions of memoranda of understanding and other international agreements.

As you evaluate offers under a specific solicitation, consider the following:

- When application of the factor would not result in the award of a domestic end product (e.g. when no domestic offers are received or when a qualifying country offer is lower than the domestic offer) evaluate offers without the 50 percent factor.
- If duty is to be exempted through the inclusion of the clause at FAR 52.225-10, Duty-Free Entry, evaluate the nonqualifying country offer exclusive of duty by reducing the offered price by the amount of duty. If award is made on the nonqualifying country offer, award at the offered price minus duty.
- If duty is not to be exempted and duty is to be paid by the Government, evaluate the nonqualifying country offer inclusive of duty.

4.2.1 Application of the Buy American Act (cont)

Buy American Act Consideration

Use the table below when considering the Buy American Act, available data sources, and pricing objectives:

BUY AMERICAN ACT CONSIDERATION	
CONSIDER USE WHEN	Acquiring supplies or services involving the furnishing of supplies, within the United States. Check your agency's FAR Supplement for guidance on agency Buy American Act requirements. Before applying Buy American Act requirements in your analysis, determine if any product or country exemptions apply.
DATA SOURCES	Rely on information provided by the offeror in completing provisions such as FAR 52.225-1, Buy American Certificate.
PRICING OBJECTIVE	Consider the pricing preference for domestic products as provided by FAR and agency regulations.
Example of Award Criteria Consideration: FAR 52.225-3, Buy American Act--Supplies, advises prospective offerors that the contractor must deliver domestic products unless one of several conditions are met. An agency determination that domestic products are available at an unreasonable cost, is one of the conditions that could permit an offeror to provide a nondomestic item.	

4.2.2 Quality-Related Costs

Introduction

FAR 9.103

In accordance with FAR 9.103, you must make an affirmative determination of a firm’s responsibility before you award a contract to the firm.

Consider the firm's performance record when making a determination of responsibility. To be responsible, an offeror must have a SATISFACTORY record of performance. The term SATISFACTORY indicates that the offeror's performance falls within a RANGE OF ACCEPTABLE PERFORMANCE. Some offerors in that range may be OUTSTANDING; others may be MINIMALLY ACCEPTABLE.

If contract award decision criteria do not reward outstanding performance, contractors have no monetary incentive to achieve more than a MINIMALLY ACCEPTABLE level of performance. Subjective analysis of past performance has always been a basis for analysis of technical capabilities in negotiated contract source selections. Unfortunately, detailed analysis of past performance is often SUBJECTIVE and based on LIMITED DATA.

Quality-Related Cost

Some acquisition managers have developed QUANTITATIVE scales to differentiate between MINIMALLY ACCEPTABLE and OUTSTANDING performance. These managers use the scales to rate contractor performance. The ratings are then used as a price-related factor for subsequent acquisitions, in theory representing the expected dollar value of the quality-related costs that the Government would incur if it buys the deliverable from that firm.

Quality-related costs include both conformance and nonconformance costs:

- **Conformance Costs**—are incurred when ensuring that certain things are done right the first time.

  Example: Product inspection costs are one kind of conformance cost. Inspections assure that items meet contract quality requirements and that deficiencies will not affect operations.

- **Nonconformance Costs**—are incurred because things are not done right the first time.

4.2.2 Quality-Related Costs (cont)

Quality-Related Cost (cont)

> **Example:** Costs related to defective products are nonconformance costs. These costs include the management cost of deciding what action to take with a defective product: return it to the supplier, use if defects are only minor, repair it, or scrap it; the cost of the actual corrective action such as repairs; and any costs related to delays that were caused by the deficiency.

While analysis of quality-related costs can consider both conformance and nonconformance costs, most analyses today focus on nonconformance costs.

Measure Performance Quality

To consider quality-related costs in an award decision, you must have some means of measuring contractor performance quality. Two of the most commonly used measures of item quality are timely delivery and item defects at the time of delivery. These measures are easy to identify and track to a particular contract or delivery. Other measures of quality, such as failures after an item is in the system, are much harder to correctly identify as contractor failures and to track to a particular contract or delivery.

It is difficult to measure the cost of timely delivery and the cost of defects at the time of delivery. Delivery too early will needlessly increase inventory investment and holding cost. Delivery too late may stop operations entirely. What is the cost of an inoperable aircraft during a war? What is the cost of replacing an inoperable freight management system with slower manual labor?

If a defective item is rejected, the effect is the same as if the item had not been delivered. If it is accepted and brought up to the required level of quality or used as is, different costs will be incurred.

Three General Approaches

In response to these complexities, many different approaches have been developed for considering the cost of item quality in the award decision. Three general approaches include:

- Blue Ribbon Contractor Programs
- Vendor Rating Systems
- Supplier Performance Indexes

4.2.2 Quality-Related Costs (cont)

Blue Ribbon Contractor Programs	Blue Ribbon Contractor (BRC) programs quantitatively consider the cost of quality in the contract award decision. Placement on a Blue Ribbon Contractor List (BRCL) is typically determined independently for each Federal Stock Class (FSC).
BRCL Requirements	Although the requirements are not the same in all organizations, each organization using a BRC program has minimum requirements for placement of a firm on its BRCL. These include: • Purchasing organization experience with the contractor over a specified period, measured in contract actions, dollars, or both. • Demonstrated percentage of on-time delivery performance over a specified period. • Demonstrated percentage of defect free units or actions over a specified period.
BRCL Review Requirements	Although all BRC programs do not have the same review requirements, all BRC programs have established requirements for: • Initial review and acceptance. • Periodic status review.
Evaluate Competitive Offers Using BRCL	Although purchasing organizations differ in how contract award decisions are made, all consider Blue Ribbon status quantitatively when making the award decision. For example, the contracting officer may make an award to a BRCL offeror whose price is within 10 percent of a low offeror who is not on the BRCL.

4.2.2 Quality-Related Costs (cont)

Vendor Rating System Programs	Vendor rating systems (VRS) typically have three or four descriptive rating levels such as: • green • yellow • red or; • exceptional • acceptable • marginal • unacceptable.
Vendor Ratings and Criteria	To use this kind of vendor rating system, you assign each contractor a rating based on specific criteria. The number of possible ratings and criteria vary, but the placement criteria should establish minimum requirements for: • Demonstrated percentage of on-time delivery performance over a specified period. • Demonstrated percentage of defect free units or contract actions over a specified period.
VRS Review Requirements	Although all VRS programs do not have the same review requirements, these programs, like Blue Ribbon Contractor programs, all establish requirements for: • Initial review and acceptance. • Periodic status review.
Evaluate Competitive Offers Using VRS	Although VRS programs vary, all consider vendor rating and price factors in the award decision. Consideration possibilities include: • Assign offerors a preference based on a higher performance rating. For example, award criteria could provide for award of a contract to a firm with a higher price and higher vendor rating over a firm with a lower price and a lower rating.

4.2.2 Quality-Related Costs (cont)

Evaluate Competitive Offers Using VRS (cont)

- Estimate the Government's cost of taking increasingly greater quality assurance actions for offerors with successively lower levels of quality, and adding those costs to offerors' proposed prices in computing the evaluated prices.
- Weight proposed prices based on the quality rating to calculate a single estimate of overall value, with award going to the offeror whose proposal offers the greatest overall value to the Government.

4.2.2 Quality-Related Costs (cont)

Supplier Performance Index Programs

Blue Ribbon Contractor programs establish two levels of quality consideration; vendor rating systems establish three or four. Supplier performance indexes (SPIs) provide for consideration of infinite levels of quality differences. Thus, SPIs provide the greatest incentive for continuing quality improvement. However, they also require substantially more effort and detailed information to develop and maintain.

Supplier Performance Indexes and Criteria

To use an SPI, assign each contractor an index using the following general formula and data gathered over a specified period of time. Data may be gathered by the item or FSC.

$$\text{SPI} = \frac{\text{Extended Purchase Price} + \text{Quality-Related Costs}}{\text{Extended Purchase Price}}$$

Minimum SPI Cost Consideration

You can consider different types of quality-related costs, but as a minimum, consider the following costs:

- Costs related to failure to deliver as scheduled
- Costs related to failure to deliver required quality

SPI Review Requirements

Although all programs are not the same, SPI programs, like the other programs considered above, all establish requirements for:

- Initial review and acceptance
- Periodic status review

Evaluate Competitive Offers

Use the SPI as a multiplier in making the award decision. Given the method of calculation described above, the SPI can never be less than 1.00. It will be 1.00 only when there are no identified quality-related costs. Multiplying the proposed price by the SPI produces an evaluated price that considers the percentage cost of quality deficiencies experienced with the offeror.

4.2.2 Quality-Related Costs (cont)

Quality-Related Cost Program Consider-ation

Use the table below to evaluate quality-related cost elements, available data sources, and pricing objectives:

QUALITY-RELATED COST CONSIDERATION	
CONSIDER USE WHEN	There are price competitive sources with differing records of performance quality. Quality-related cost consideration is particularly useful for situations where there is a continuing requirement for products with similar quality requirements.
DATA SOURCES	Available Government records on the number and cost of contractor incidents of nonconformance with Government requirements. The most common quality-related costs considered are related to deficiencies in delivery and quality deficiencies identified at time of delivery.
PRICING OBJECTIVE	Minimize the total cost of the acquisition, considering: • Purchase price • Costs related to nonconformance
Example of Blue Ribbon Quality Criteria Consideration: Based on demonstrated dependable quality and delivery performance, as evidenced by membership on the agency's Blue Ribbon Contractor List (BRCL), the contracting officer may award to an offeror at a price up to 10 percent higher than a lower offeror who is not on the BRCL.	
Example of Vendor Rating System* (VRS) *Quality Consideration: Both price and the offeror's Vendor Rating System rating will be considered in offer evaluation. Award may be made to a firm with a higher priced, higher rated offer.	
Example of Supplier Performance Index (SPI) Quality Criteria Consideration: Price evaluation will be performed using the offeror's SPI for the appropriate Federal Stock Class. (FSC). If the offeror does not have an SPI assigned, the contracting officer will assign, for purposes of evaluation, an SPI equal to the average SPI of all firms in that FSC.	

4.2.3 Government Furnished Production and Research Property

Introduction

FAR 45.2

Another cost factor has to do with Government-furnished property (GFP). When evaluating offers:

- Eliminate any competitive advantage accruing to a contractor possessing Government furnished production and research property.
- Consider any costs or savings to the Government related to providing GFP.

Eliminate Competitive Advantage in Offer Evaluation

FAR 45.201
FAR 52.245-9

To eliminate competitive advantage to a contractor with Government furnished production and research property, you can:

- **Adjust the offers of contractors possessing GFP.** Adjusting offers for evaluation purposes only is the **preferred method of eliminating competitive advantage**. The adjustment factor must be equal to the rent that would have been charged under the provisions of FAR 52.245-9, Use and Charges. However, this method is not appropriate when the contracting officer determines that using the factor would not affect the choice of contractor.

FAR 45.201
FAR 52.245-9

- **Charge the contractors rent for using GFP.** Charging contractors rent for GFP is done **only when adjustment of offers for award purposes is not practical**. Any offeror or subcontractor may use GFP after obtaining the written approval of the cognizant contracting officer. Rent will be charged in accordance with the provisions of FAR 52.245-9, Use and Charges.

4.2.3 Government Furnished Production and Research Property (cont)

Evaluate Costs and Savings

FAR 45.202-3(a)

When evaluating offers, you must also consider any costs or savings to the Government that will result from providing production or research property, regardless of any competitive advantage that may result.

- **Cost-related evaluation factors** for GFP must incorporate direct measurable costs either as dollar amounts or formulas. Limit consideration to the costs identified below. If the terms of the solicitation make the contractor responsible for any of these costs, no further evaluation factors shall be used to consider that cost.
  - ◊ Reactivation from storage
  - ◊ Rehabilitation and conversion
  - ◊ Making the property available on an f.o.b. basis

- **Savings-related evaluation factors** for such GFP must consider measurable savings. The dollar amount of these savings must be specified in the solicitation and used in offer evaluation. Examples of such savings include:
  - ◊ Savings resulting from activating tools maintained in idle status at Government expense.
  - ◊ Savings resulting from avoiding the costs of deactivating and placing tools in layaway, storage, or idle status.

4.2.3 Government Furnished Production and Research Property (cont)

GFP Consider-ation

FAR 45.2
FAR 52.245-9

Use the table below when considering the Government furnished production and research property factor, available data sources, and pricing objectives:

	GOVERNMENT FURNISHED PRODUCTION AND RESEARCH PROPERTY CONSIDERATION	
	Competitive Advantage	**Costs and Savings**
CONSIDER USE WHEN	**Elimination.** One or more of the potential offerors has a competitive advantage because the firm possesses Government-furnished production and research property that can be used in performing the contract.	There are costs and savings that are expected to result from the furnishing of Government production and research property that must be considered in proposal evaluation.
DATA SOURCES	Government and contractor records on Government furnished production and research property in the contractor's possession. Rental criteria established in FAR 52.245-9, Use and Charges.	Estimates of the following costs related to furnishing property: • Reactivation • Rehabilitation & Conversion • Making property available Estimates of savings from: • Activating tools maintained in idle status at Government expense. • Avoiding tool deactivation costs.
PRICING OBJECTIVE	Eliminate any competitive advantage that may accrue to a firm possessing Government furnished production and research property.	Determine whether it is in the Government's best economic interest to furnish Government production and research property.
Example of GFP Competitive Advantage Award Criteria Consideration: For purposes of offer evaluation, any offer predicated on rent-free use of Government furnished property (GFP) will be adjusted to eliminate possible competitive advantage. The adjustment will be made using a rental equipment adjustment factor equal to the allocable rent that would otherwise be charged for the GFP. Rent will be computed in accordance with FAR 52.245-9, Use and Charges.		
Example of GFP Costs and Savings Award Criteria Consideration: In addition to any other proposal adjustments, $9,000 will be deducted from any offers proposing to use the GFP identified in Solicitation paragraph L-45. The $9,000 represents the costs that the Government will avoid if the identified GFP is not placed in storage.		

4.2.4 Transportation Costs

Introduction

FAR 47.301

When transportation costs are not included in item purchase price, you must consider them as part of any supply contract award decision. Your objective is to ensure that acquisitions are made on the basis most advantageous to the Government, and that supplies arrive in good order, in good condition, on time, at the required place.

FAR 47.301-1 FAR 47.301-2

Work with your agency's transportation officers during solicitation and evaluation of offers to ensure that all necessary transportation factors are considered, including transportation costs.

F.O.B. Definition

FAR 47.001

The term **free on board (f.o.b.)** is used in conjunction with a physical point to determine:

- The **responsibility and basis for payment of freight charges** and
- Unless otherwise agreed to, the point at which title for goods passes to the buyer or consignee.

For example: Contracts with **"f.o.b. origin" generally require the Government to pick up the deliverable** at the contractor's warehouse, with the Government responsible for shipping costs from the warehouse. In contrast**, "f.o.b. destination" contracts generally requires the contractor—at the contractor's expense— to ship the deliverable** to a Government loading dock.

Usually, the f.o.b. point is either the place of shipment origin or shipment destination, but it can be any place in between.

F.O.B. Terms Selection

FAR 47.304-1(b)

As you prepare the solicitation, determine the f.o.b. terms on the basis of lowest overall cost. The solicitation must specify whether offerors must submit offers based on:

- f.o.b. origin
- f.o.b. destination
- both f.o.b. origin and f.o.b. destination
- either f.o.b. origin or f.o.b. destination at the discretion of the offeror

4.2.4 Transportation Costs (cont)

F.O.B. Terms Selection (cont)

To determine the most advantageous f.o.b. point, ask whether the Government or the contractor can get the best freight rates. If you can get better rates than the contractor, go with f.o.b. origin. If the contractor can get the best rates, go with f.o.b. destination. If you are not sure, solicit both "f.o.b. origin" and "f.o.b. destination" prices.

Advantages of F.O.B. Origin Contracts

FAR 47.304-3(b)
FAR 47.304-1(c)

Unless there are valid reasons otherwise, shipments from the Continental United States (CONUS) to locations outside CONUS must be made f.o.b. origin.

Other cost related advantages that result from f.o.b. origin contracts include one or more of the following:

- Availability of such transit privileges as stopping a carload or truckload at a specific intermediate point for storage, processing or other purposes, as specified in the carrier's rates.
- Ability to divert shipments to new destinations without price adjustments.
- Ability to use special routings or types of equipment without price adjustments.
- Ability to facilitate (if necessary) the use of premium cost transportation or Government controlled transportation.
- Opportunities for direct negotiations with shipping companies for reduced freight rates.
- Opportunity to use small shipment consolidation stations.

Advantages of F.O.B. Destination Contracts

FAR 47.304-1(f)
FAR 47.304-1(g)

When acceptance must be at destination, the f.o.b. point must also be destination. However, acceptance at origin does not require that the f.o.b. point also be at origin.

Because it is more advantageous to the Government, contracts will normally require f.o.b. destination when:

- Bulk supplies, such as coal, that require other than Government-owned or operated handling, storage, and loading facilities, being shipped to locations outside the continental United States.
- Steel or other bulk construction materials being shipped to locations outside the continental United States.

4.2.4 Transportation Costs (cont)

Advantages of F.O.B. Destination Contracts (cont)

- Supplies consist of forest products such as lumber.
- Supplies consist of perishable or medical items which are subject to intransit deterioration.
- Evaluation of f.o.b. origin offers is anticipated to result in increased administrative lead time or administrative cost that would outweigh the potential advantages of an f.o.b. origin determination.

Evaluate Price Competitive Offers

When evaluating offers for supplies, consider transportation costs in determining the lowest evaluated price.

The simplest evaluation situation occurs when all offers are quoted **f.o.b. destination.** Since transportation is included in the price, no further adjustments are required.

FAR 47.306

When offers are quoted **f.o.b. origin**, consider the following two factors along with purchase price when determining the lowest evaluated price:

- The cost of transportation from the offeror's designated point of origin to the destination defined in the solicitation. The Government normally uses land transportation rates in proposal evaluation.
- When provided for in the solicitation, proposed cost-reimbursable differentials based on possible routing conditions. These contingencies may be included by offerors to compensate for an unfavorable routing condition. Evaluation is based on the routing conditions anticipated at the time of award.

When offers may be quoted either f.o.b. origin or f.o.b. destination, offer evaluation will include the cost of transportation. F.o.b. destination offers will not require adjustment. F.o.b. origin offers will consider the factors described above. Make award to the offeror with the lowest evaluated price.

4.2.4 Transportation Costs (cont)

Transportation Cost Consider-ations

FAR 47.306-2

Use the table below when considering transportation cost factors, available data sources, and pricing objectives:

TRANSPORTATION COST CONSIDERATION	
CONSIDER USE WHEN	Differences in transportation cost will be a factor in determining the lowest evaluated offeror. When prices are offered f.o.b. destination, transportation costs are assumed to be included in offered prices. When offers are quoted f.o.b. origin, the cost of transportation-related costs must be expressly considered when determining the evaluated price.
DATA SOURCES	The primary source of information on all questions related to transportation is the transportation officer. Offerors will include transportation costs in f.o.b. destination prices.
PRICING OBJECTIVE	Award contracts to offerors whose proposals are most advantageous to the Government. Evaluate f.o.b. origin proposals considering all transportation related costs, including applicable routing condition differentials.
Example of Transportation Award Criteria Consideration: Award will be made f.o.b. destination or f.o.b. origin to the offeror with the lowest evaluated price. F.o.b. origin offers will be evaluated on the basis of unit price bids plus transportation cost to destination based on the most economical rates available to the Government, in accordance with FAR 47.306-2.	

4.2.5 Options and Multiyear Contracting

Introduction	Contracts are normally written to acquire supplies and services in support of identified requirements, and funded with funds approved by Congress for the current year. Options and multiyear contracting are two methods of establishing longer-term relationships with contractors. Both of these techniques may be used in either sealed bidding or negotiation.
Options FAR 17.201	Options are unilateral rights prescribed in a contract, which, for a specified time, permit the Government to elect to purchase additional supplies or services called for in the contract or to elect to extend the term of the contract.
Reasons for Using Options FAR 17.202(d)	Options are included in contracts to attract more effective competition, to reduce the administrative costs of repetitive competition, to eliminate the cost associated with disrupted support, and to provide for greater continuity in the contracting situation.
Exercising Options FAR 17.207	The Government is under no obligation to exercise any options prescribed in a particular contract. Options may be exercised at award or at a later time as prescribed in the contract. Options are funded when exercised using funds available at that time.
Multiyear Contracting FAR 17.101	Multiyear contracting is a special contracting method for acquiring known quantity and cost requirements that do not exceed planned requirements over five years (unless otherwise authorized by statute). This contracting technique can be employed even though the total funds ultimately to be obligated are not available at the time of contract award. In practice, multiyear contracting is rarely used by any agency other than the Department of Defense.

4.2.5 Options and Multiyear Contracting (cont)

Reasons for Using Multiyear Contracting

FAR 17.102-3(a)

Reasons for multiyear contracting include:

- Lower costs.
- Enhanced standardization.
- Reduced administrative burden.
- Substantial continuity of production or performance(avoiding annual startup costs, preproduction testing costs, make-ready expenses, and phaseout costs).
- Stabilization of contractor work forces.
- Avoidance of the need to establish and "prove out" quality control techniques and procedures for a new contractor each year.
- Broadened competitive base with opportunity for participation by firms not otherwise willing or able to compete for lesser quantities, particularly in cases involving high startup costs.
- Increased incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.

Multiyear Contract Awards

FAR 17.103-4(a)

In multiyear contracting, prices are solicited for both the current one-year requirement alone and for the total multiyear requirement. Award is made on whichever alternative offers the lowest unit prices to the Government.

Funding Multiyear Contracts

FAR 17.102-2(c)

Funds are obligated for only the first years' requirement, with succeeding year's requirements funded annually. If funds do not become available for succeeding years' requirements, the agency must cancel the contract. To protect the contractor, multiyear contracts typically contain a contract provision that provides for reimbursement to the contractor of any nonrecurring expenses that were included in the prices of the canceled items.

FAR 17.103-1(b)

You may use multiyear contracting for a wide variety of supplies and services when one-year funds or no-year funds are available. In situations where one-year funds are used, the use of multiyear contracting must be specifically authorized by statute.

4.2.5 Options and Multiyear Contracting (cont)

Evaluate Competitive Offers-Options

FAR 17.206

Solicitations containing option provisions must state the basis for evaluation. Evaluation may either include or exclude option provisions. Include options in the evaluation of offers when it has been determined, prior to solicitation, that the Government is likely to exercise the options.

Options need not be included in the evaluation of offers when the contracting officer determines that evaluation would not be in the best interest of the Government, and this determination is approved at a level above the contracting officer. For example, the contracting officer may choose not to evaluate an option when there is a reasonable certainty that funds will not be available by the time the option must be exercised.

4.2.5 Options and Multiyear Contracting (cont)

Evaluate Competitive Offers—Multiyear Contracting

FAR 17.103-2

When previous purchases have been **competitive**, provision must be made for offerors to offer prices for:

- The first program year, for the total program, or both; or
- Only for the total multiyear requirement, when competition for future acquisitions would be impractical after the first year and such action is necessary to prevent a first program year buy-in.

When previous acquisitions have been **non-competitive and no first program year buy-in is anticipated**, include:

- A provision that offerors must submit a price for the first-year program requirement and may submit an offer for the total multiyear requirement, but offerors only submitting an offer for the multiyear requirement will be considered nonresponsive.
- A provision that if only one offer is received that is both responsive and from a responsible offeror, the Government reserves the right to disregard the offer on the multiyear requirement and award only for the first program year.

When competition after the first program year would be impracticable after award of a contract covering the first-year requirement, and it is necessary to prevent a first program year buy-in, include:

- A provision that a price may be submitted only on the total multiyear requirement and that prices on a single-year basis will not be considered for award.
- A provision that if only one offer on the multiyear requirement is received that is both responsive and from a responsible offeror, the Government reserves the right to disregard the offer on the multiyear requirement and resolicit on a single-year basis.

The **goal of evaluation is to determine the lowest evaluated unit price.** If both first program year and multiyear contract prices were solicited, you will normally compare low offers for each requirement and award to the lowest evaluated unit price. If pricing was restricted to the multiyear requirement, you will normally award to the firm with the lowest multiyear offer. Your evaluation of offers must involve a determination of the lowest overall evaluated cost to the Government for both the multiyear and first program year acquisition. You can then compare the costs of the two methods of purchase are then compared.

4.2.5 Options and Multiyear Contracting (cont)

Options and Multiyear Consideration

FAR 52.217-5

Use the table below to consider options and multiyear contracting, available data sources, and pricing objectives:

OPTIONS AND MULTIYEAR CONTRACTING CONSIDERATION		
	Options	**Multiyear Contracting**
CONSIDER USE WHEN	There are reasonable estimates of future requirements, funds are not currently available, and the contracting officer believes that the use of options will accomplish one or more of the following: attract more effective competition, reduce the administrative costs of repetitive competition, eliminate the costs associated with disrupted support, or provide for greater continuity in the contracting situation.	There are reasonable estimates of future requirements, use of multiyear contracting is authorized, and the contracting officer believes that multiyear contracting will benefit the Government. Two of the most important benefits are increased competition and the reduction of acquisition costs.
DATA SOURCES	The primary source of information on the price of options is the offeror's proposal.	The primary source of information on the price of multiyear contracting is the offeror's proposal.
PRICING OBJECTIVE	Award contracts to offerors whose proposals are most advantageous to the Government. Options must be part of offer evaluation when it has been determined prior to solicitation that the Government is likely to exercise the options. Options need not be included in evaluation of offers when it is determined that evaluation would not be in the best interest of the Government.	Award contracts to offerors whose proposals are most advantageous to the Government. Evaluation determines if the lowest unit price is for award of only the first program year or for award of the multiyear contract, including the first year.

Example of Option Award Criteria Consideration:

EVALUATION OF OPTIONS (JUL 1990)

Except when it is determined in accordance with FAR 52.217-5 not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

4.2.6 Life-Cycle Costs

Definition

Life-cycle cost is the total cost of an item or system over its full life, including the costs of:

- Development
- Production
- Operation and Maintenance
- Disposal
- Replacements

Life-Cycle Cost Context

To be meaningful, an expression of life-cycle cost must be placed in context with:

- The cost elements included
- Period of time covered
- Assumptions and conditions applied
- Whether the analysis is intended to be a relative comparison or an absolute expression of expected costs.

Definitions of Life-Cycle Cost Elements

Development Cost—all costs, including contract costs, associated with the research and development needed to produce an operational item or system.

Production Cost—all contract costs associated with the production of an item or system.

Operation and Maintenance Cost—all costs, including contract costs, associated with equipment, supplies, and services needed to operate and maintain an operational system.

Disposal Costs—all costs, including contract costs, associated with removing operational equipment from service and disposing of it.

Replacement Costs—the cost of acquiring replacements for items that have outlived their useful lives. Replacement costs are of significance when the items being offered by competing vendors have different useful lives (e.g., when the light bulbs of Offeror A have an average life of 100 hours while the light bulbs of Offeror B have an average life of 600 hours).

4.2.6 Life-Cycle Costs (cont)

General Consider-ations

Consideration of life-cycle costs in offer evaluation is particularly important in situations where the item or system cost of operation and maintenance and the cost of disposal are significant in comparison with the cost of purchase or production. In such situations:

- Identify factors with a significant effect on life-cycle cost results, and implement tradeoff studies to evaluate alternative actions which could reduce costs related to those factors.
- Consider life-cycle costs in product design.
- Choose acquisition strategies which help minimize life-cycle costs.
- Select sources for development and production which offer the best balance between product performance and the life-cycle cost.
- Establish contract commitments, when appropriate, to help in controlling life-cycle cost results.
- Conduct follow-on efforts subsequent to purchase for purposes of further reducing life-cycle cost.

Evaluate Competitive Offers

In order to evaluate life-cycle costs in competitive proposals, solicitations must require offerors to estimate key elements of life-cycle cost. To prepare such estimates, the offeror must have information on item operation, such as usage, operating environment, and expected life. As a minimum, offers should provide information, supported by test or operational data, for the key elements identified. Typical life-cycle cost elements include:

- Average unit price, including recurring and nonrecurring costs.
- Unit costs to support operating crew and maintenance manpower requirements.
- Unit costs for operating energy and supply requirements.
- Costs related to operational reliability (average time between failures) and maintainability (expected cost to maintain, including repair).
- Discounted replacement costs, given differences in expected life of items from competing vendors.

4.2.6 Life-Cycle Costs (cont)

Long Term Cost Comparison Consideration	When life-cycle costs continue over a period of years, costs should be compared in terms of a constant dollar base and should reflect the relative timing of both acquisition and ownership costs. If necessary, apply adjustments for uncertainty, time value of money, inflation, etc.,. to the basic estimate to support individual decision requirements.
Reasonable, Realistic, and Complete Estimates	In offer evaluation, the reasonableness, realism, and completeness of the life-cycle cost estimate must be evaluated. Ask the following questions: • Is the estimating methodology reasonable? • Are the costs realistic when compared with other known information, including past cost performance? • Is the estimate complete in its consideration of all identified cost elements? If estimates are reasonable, realistic, and complete, award may be made based on lowest evaluated life-cycle cost, or, life-cycle cost may be considered as a major factor in an award decision that also considers other technical characteristics of the item or system

4.2.6 Life-Cycle Costs (cont)

Life-Cycle Cost Consideration

Use the table below to consider the life-cycle cost factor, available data sources, and pricing objectives:

LIFE-CYCLE COST CONSIDERATION	
CONSIDER USE WHEN	The item or system cost of operation and maintenance and/or the cost of disposal are significant in comparison with the cost of purchase or production. Analysis can range from consideration of a single significant operation and maintenance or disposal cost to complete consideration of all life-cycle costs.
DATA SOURCES	The user is the primary source of information on item operation, such as usage, operating environment, and expected life. The offeror is the primary source of cost information concerning the life-cycle costs of a particular item or system. As a minimum, offers should provide information, supported by test or operational data, for key elements identified.
PRICING OBJECTIVE	Award contracts to offerors whose proposals are most advantageous to the Government. Life-cycle cost estimates must be evaluated for reasonableness, realism, and completeness. If estimates are reasonable, realistic, and complete, award may be made based on lowest evaluated life-cycle cost, or, life-cycle cost may be considered as a major factor in the award decision.

Example of Life-Cycle Cost Award Criteria Consideration:

Offers will be evaluated on the basis of the lowest cost to the Government based on the SUM of the following:

- *Purchase Price*
- *Repair Cost*—derived from the mean time between failure rate* and repair prices from applicable maintenance contracts.
- *Ribbon Cost*—derived from ribbon life* and the unit price for ribbons.
- *Energy Cost*—derived from the published electrical requirements of the motor and the current unit price for electricity.

LESS the value of the machine after 10 years—derived from historical resale prices.

* As determined by testing on an automatic typing machine.

4.2.7 Energy Conservation and Efficiency

Introduction FAR 23.203	The cost of energy is an important cost of operating many items and systems. FAR 23.203 requires that, whenever the results would be meaningful, practical, and consistent with agency program and needs, agencies must apply energy conservation and efficiency criteria to acquisitions. These criteria must be considered along with price and other relevant factors in evaluating offers for award.
Energy Use and Efficiency Labels FAR 23.202	Agencies must consider energy use and efficiency labels on all covered products and energy efficiency standards as they become available. Covered consumer products include: central air conditioners, clothes dryers, clothes washers, freezers, and room air conditioners.
Long-Term Energy Cost Comparison Consideration	As with life-cycle cost evaluations, when energy costs continue over a period of years, costs should be compared in terms of a constant dollar base and should reflect the relative timing of both acquisition and ownership costs. If necessary, apply adjustments for uncertainty, time value of money, inflation, etc. to the basic estimate, to support individual decision requirements.
Evaluate Competitive Offers	Award may be made based on lowest evaluated cost, including energy cost, or, energy cost may be considered as a major factor in an award decision that also considers other technical characteristics of the item or system.

4.2.7 Energy Conservation and Efficiency (cont)

Energy Conservation and Efficiency Consider-ations

Use the table below to consider the energy conservation and efficiency factor, available data sources, and pricing objectives:

ENERGY CONSERVATION AND EFFICIENCY CONSIDERATION	
CONSIDER USE WHEN	Results would be meaningful, practical, and consistent with agency programs and needs.
DATA SOURCES	Energy use and efficiency labels provide data on all covered products and energy efficiency standards as they become available. Other use and test data can provide useful data on energy usage.
PRICING OBJECTIVE	Award contracts to offerors whose proposals are most advantageous to the Government. Award may be made based on lowest evaluated cost, including energy cost. Energy cost may be considered as a major factor in an award decision that also considers other technical characteristics of the item or system.
Example of Energy Award Criteria Consideration: Award will be made to the firm whose offer will provide the lowest total cost of acquisition and ownership to the Government during the first year of operation, considering price and energy cost. Estimates of energy cost will be based on the Energy Use and Efficiency Label provided by the manufacturer under 42 U.S.C. 6296.	

4.2.8 Lease vs. Purchase Considerations

Introduction
FAR 7.401(a)

Agencies should consider whether to lease or purchase equipment based on a case-by-case evaluation of comparative costs and other factors.

When to Purchase
FAR 7.402(a)

Generally, the purchase method is appropriate if the equipment will be used beyond the point at which cumulative leasing costs exceed purchase costs. You should not rule out equipment purchase, in favor of leasing, merely because future technological advances might make the selected equipment less desirable.

Primary Factors to Consider
FAR 7.401(a)

As a minimum, consider the following factors:

- Estimated length of time that the equipment will be used and the extent of use during that period.
- Financial and operating advantages of alternative types of equipment
- Cumulative rental payments for the estimated period of use
- Net purchase price
- Transportation and installation costs
- Maintenance and other service costs
- Potential obsolescence of the equipment because of imminent technological improvements

Additional Factors to Consider
FAR 7.401(b)

In addition, consider the following factors, as appropriate, depending on the type, cost, complexity, and estimated period of use of the equipment:

- Availability of purchase options
- Potential for use of the equipment by other agencies after its use by the acquiring agency
- Trade-in or salvage value
- Imputed interest
- Availability of a servicing capability, especially for highly complex equipment

4.2.8 Lease vs. Purchase Considerations (cont)

Evaluate Competitive Offers

Generally the lease vs. purchase decision is not made as part of an evaluation of competitive offers. Rather, it is made based on data collected especially for this purpose.

However, there are situations in which it may make sense to solicit such competition. For example, if equipment requires a unique maintenance capability, proposals based on lease with maintenance might be competed against purchase prices and contract or in-house maintenance.

Lease vs. Purchase Consider-ation

FAR 7.401
FAR 7.402

Use the table below to consider lease vs. purchase, available data sources, and pricing objectives:

LEASE VS. PURCHASE CONSIDERATION	
CONSIDER USE WHEN	Lease and purchase appear almost equally attractive. Accepting offerors based on both lease and purchase will maximize available competition and encourage the best price for both methods.
DATA SOURCES	Offerors will be a prime source of information about equipment lease and purchase costs. The user is the primary source of information on item operation, such as usage, operating environment, and expected life.
PRICING OBJECTIVE	Award contracts to offerors whose proposals are most advantageous to the Government. Award may be made based on lowest overall evaluated cost.
Lease vs. Purchase Award Criteria Consideration: The Government will acquire the equipment identified in Section B by either lease or purchase. The method of acquisition and the successful offeror will be determined based on the lowest discounted total cost to the Government for acquisition and disposition. Operation and maintenance costs will not be considered in offer evaluation.	

Chapter Vignette (cont)

Widget Acquisition (cont)

Since your office does not have any major requirements for related items, you have already decided to limit your solicitation to your widget requirement.

All the acquisition history and other market-related data that you have been able to collect so far lead you to estimate that you will have six independent sources competing for the contract. Based on the close competition for past acquisitions, it appears that all potential offerors will be able to furnish all of the units required by the Government.

You decide to make an aggregate award to a single offeror.

As you look back over past acquisitions and talk to widget users, you note that users perceive a substantial difference in the quality of widgets that have been acquired in the past. Two of the potential sources have a reputation for always delivering on time and without defect. Other sources, while acceptable, have had occasional problems involving on-time delivery and product defects.

You decide to use your organization's new Blue Ribbon Contractor Program to consider quality in making the award decision.

Based on your decisions, you select the following award criteria:

"Based on demonstrated dependable quality and delivery performance, as evidenced by membership on the agency's Blue Ribbon Contractor List (BRCL), the contracting officer may award to an offeror at a price up to 10 percent higher than a lower offeror who is not on the BRCL."

Applying Price-Related Factors — CHAPTER 5

Chapter Vignette

Widget Acquisition (cont)
Your solicitation has been "on the street." It includes one price-related factor — quality — based on application of the Blue Ribbon Contractor List.
The offers are in hand. The time has come to open them and apply the price-related factor. Using the price-related factor, you must now calculate an "evaluated" price for each offer.

Objective

At the End of This Chapter

At the end of this chapter you will be able to:

Classroom Learning Objective 5/1

Apply all price-related factors identified in the solicitation and determine the lowest evaluated price, for example:

5.0 Introduction

In this chapter

In this chapter, you will learn how to apply selected price-related factors when you make the award decision.

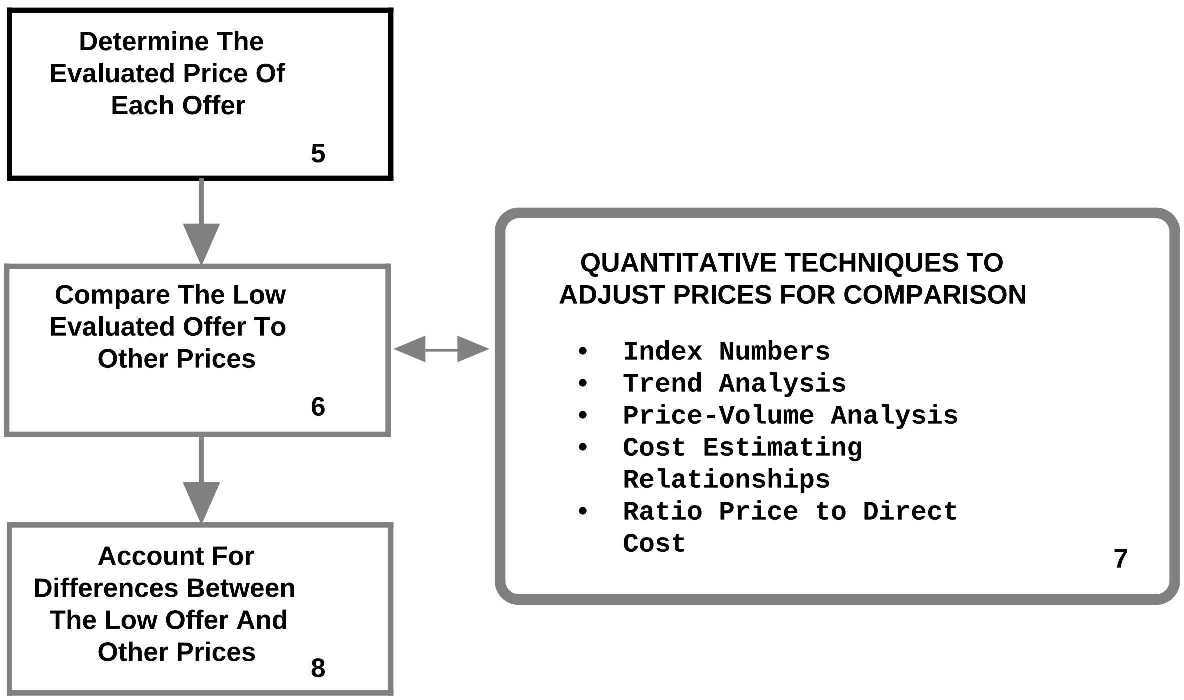
SECTION	DESCRIPTION	SEE PAGE
5.0	Introduction	5-3
5.1	Applying Assumed Administrative Costs Factors	5-6
5.2	Applying Buy American Act Criteria	5-11
	5.2.1 Using FAR Criteria	5-12
	5.2.2 Using DFARS Criteria	5-17
5.3	Applying Quality-Related Factors	5-22
	5.3.1 Blue Ribbon Contractor Programs	5-24
	5.3.2 Vendor Rating Systems	5-27
	5.3.3 Supplier Performance Index	5-30
5.4	Applying Government Furnished Production and Research Property Factors	5-32
	5.4.1 Eliminate Competitive Advantage	5-33
	5.4.2 Consider Costs and Savings to the Government	5-36
5.5	Applying Transportation Cost Factors	5-39
5.6	Applying Energy Conservation and Efficiency Factors	5-43
5.7	Considering Lease vs. Purchase	5-46

Chapter Introduction (cont)

Procedural Steps

The following figure shows where this chapter fits into the conduct of a price analysis.

STEPS IN ANALYZING PRICES
(Chapters 5 - 8)



5.0 Introduction (cont)

Chapter Organization

Each section of this chapter will examine a single price-related factor and that examination will be divided into two parts:

- **General evaluation requirements.** The general evaluation requirements section will cover the general steps of using each price-related factor in offer evaluation:

  Step 1. Determine Solicitation Provisions.

  Step 2. Determine Total Price Offered.

  Step 3. Evaluate Award Combinations.

  Step 4. Make Award Decision.

- **Evaluation example.** The evaluation example section will demonstrate an actual evaluation following the general evaluation requirements for that factor.

5.1 Applying Assumed Administrative Cost Factors

Introduction

When multiple award of different line items in the solicitation is possible, your objective should be to minimize the total cost to the Government. Since it will cost more to administer each additional contract, you must consider that cost in your evaluation. This section demonstrates the evaluation process.

General Evaluation Requirements

FAR 14.201-6(q)
FAR 15.407(h)

Step 1. Determine Solicitation Provisions.

When the contracting officer determine that making multiple awards might be economically advantageous to the Government, you must insert a clause in the solicitation notifying the offeror that the assumed administrative cost of making multiple awards is $500.

Step 2. Determine Total Offered Price.

When all offers have been received, you must determine the total offered price for each item for each offeror.

Step 3. Evaluate Possible Award Combinations.

In your evaluation of offers, you must apply the $500 in administrative costs when evaluating the possible award combinations. In relatively simple award situations, you might be able to determine the proper award decision without detailed calculations. In most situations, however, you must evaluate all possible award combinations. If the number of offerors is so large that evaluation of all possible methods of award would be prohibitive, you may exclude offerors that obviously have no chance of receiving the award. When determining which offerors do have a chance of receiving an award, consider the following:

5.1 Applying Assumed Administrative Cost Factors (cont)

General Evaluation Requirements (cont)

- A successful offeror will NORMALLY be low on one or more items.
- If there are many offerors who are low on different items, it MAY BE POSSIBLE for a firm that is close to the low offeror on many items to win an award when the cost of contract administration is considered.

Step 4. Make Award Decision.

Select the offers that provide the lowest evaluated prices.

Evaluation Example

FAR 52.214-22
FAR 52.215-34

Step 1. Determine Solicitation Provisions.

Similar evaluation requirements are described in FAR 52.214-22 for sealed bidding and in FAR 52.215-34 for negotiation. As an example of the evaluation process, consider an award under sealed bidding procedures. Assume that the following clause was included in the solicitation:

FAR 52.214.22

> EVALUATION OF BIDS FOR MULTIPLE AWARDS (MAR 1990) [FAR 52.214.22] In addition to other factors, bids will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (multiple awards). It is assumed, for the purposes of evaluating bids, that $500 would be the administrative cost to the Government for issuing and administering each contract awarded under this solicitation, and individual awards will be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

5.1 Applying Assumed Administrative Cost Factors (cont)

Evaluation Example (cont)

Step 2. Determine Total Offered Price

In your evaluation of bids, you must consider the possible award combinations. Bids on the three different line items in the solicitation were received from two bidders. The extended line item totals, unit price multiplied by quantity, are shown in the table below.

ITEM	BIDDER #1	BIDDER #2
1	$74,000	$74,450
2	$94,750	$94,250
3	$22,125	$21,500

Step 3. Evaluate Possible Award Combinations

Given the evaluation criteria and the bids, there are three possible methods of contract award:

- Multiple Awards
- Award All Items to Bidder #1
- Award All Items to Bidder #2

<u>Multiple Awards</u>

Awards to both Bidders #1 and #2. Looking at the bids without considering the $500 evaluation factor, making multiple awards appears to be the logical decision. Following this procedure, the total evaluated price would be:

ITEM	BIDDER # 1 AWARD	BIDDER # 2 AWARD	TOTAL PRICE
1	$74,000		$74,000
2		$94,250	$94,250
3		$21,500	$21,500
Admin Cost	$ 500	$ 500	$ 1,000
Evaluation Price	$74,500	$116,250	$190,750

5.1 Applying Assumed Administrative Cost Factors (cont)

Evaluation Example (cont)

Step 3. Evaluate Possible Award Combinations (cont)

Award All Items to Bidder #1

If all items were awarded to Bidder #1, the total evaluated price would be:

ITEM	BIDDER # 1 AWARD	BIDDER # 2 AWARD	TOTAL PRICE
1	$74,000		$74,000
2	$94,750		$94,750
3	$22,125		$22,125
Admin Cost	$ 500		$ 500
Evaluation Price	$191,375		$191,375

Award All Items to Bidder # 2

If all items were awarded to Bidder #2, the total evaluated price would be:

ITEM	BIDDER # 1 AWARD	BIDDER # 2 AWARD	TOTAL PRICE
1		$74,450	$74,450
2		$94,250	$94,250
3		$21,500	$21,500
Admin Cost		$ 500	$ 500
Evaluation Price		$190,700	$190,700

Step 4. Make Award Decision

In this case, your decision should be to award the entire requirement to Bidder #2, because this would result in the lowest aggregate price to the Government. Although multiple awards appeared to be the correct decision at first, you can see that, when the assumed administrative cost was factored in, the total evaluated price was lowest if all items are awarded to Bidder #2.

5.2 Applying Buy American Act Criteria

Overview

In This Section

To implement the requirements of the Buy American Act, the FAR and agency regulations establish criteria for determining the low offer when you are offered both domestic and foreign products in competition with one another for in response to your solicitation. This section demonstrates the evaluation process following the general FAR guidelines and following the Defense Federal Acquisition Regulation Supplement (DFARS) guidelines.

TOPIC:	SEE PAGE
5.2.1 Using FAR Criteria	5-12
5.2.2 Using DFARS Criteria	5-17

5.2.1 Using FAR Criteria

Introduction

This section demonstrates application Buy American Act in supplies acquisition using the procedures delineated in FAR 25.1

General Evaluation Requirements

Step 1. Determine Solicitation Provisions

First, you must determine that the Buy American Act applies to the acquisition. The first question is whether the clause at FAR 52.225-3, "Buy American Act—Supplies" was required for the acquisition and incorporated in the solicitation. This clause obliges the contractor to deliver "only domestic end products, except those—

(1) For use outside the United States;

(2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the agency determines that domestic preference would be inconsistent with the public interest; or

(4) For which the agency determines the cost to be unreasonable (see section 25.105 of the Federal Acquisition Regulation).

Second, you must examine the "Buy American Certificate" submitted by each offeror to determine if any admit to offering a foreign product. If any list an "Excluded End Product" on the Certificate, the Buy American Act criteria would apply unless:

- The country of origin or product are covered by one of the many exceptions to application of those criteria in FAR Part 25, or
- No competing firm has offered a domestic product (i.e., an "unexcluded" end product) in response to your solicitation.

For the purposes of this section, assume that an "Excluded End Product" (i.e., a foreign offer) is in competition with domestic offers and that there is no applicable exception to the Act.

5.2.1 Using FAR Criteria (cont)

General Evaluation Requirements (cont)

Step 2. Determine Total Offered Price

Apply all other price-related factors in the solicitation **first** (including any duty on the foreign product), determine the low evaluated price of the foreign offer and each of its domestic counterparts.

Step 3. Evaluate Possible Award Combinations

Remember, do not adjust offers of nondomestic products if the item or country is exempt from the requirements of the Buy American Act.

If the Act applies, and the "lowest acceptable domestic offer" is from a large business, add 6% to the cost of the "lowest acceptable foreign offer".

If the Act applies and the "lowest acceptable domestic offer" is from a small business, add 12% to the cost of the "lowest acceptable foreign offer".

Step 4. Make Award Decision

Award to the offeror with the lowest evaluated price, after application of the Buy American criteria in Step 3. Settle ties in favor of domestic offers.

5.2.1 Using FAR Criteria (cont)

Evaluation Example

Step 1. Determine Solicitation Provisions

For the purposes of this evaluation example, assume that the "Buy American Act" applies to the acquisition, with no applicable exception to the Act for the end product or the acquisition. The acquisition is for radar detectors. You have received offers from three firms — Offeror #1, Offeror #2, and Offeror #3.

As your first step, examine the Buy American Certificate. Having done so, you discover that Offeror #1 has completed the certificate as follows.

BUY AMERICAN CERTIFICATE (DEC 1989)

The offeror certifies that each end product, except those listed below, is a domestic end product (as defined in the clause entitled "Buy American Act—Supplies"), and that components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

Excluded End Products	**Country of Origin**
Item 1AA Radar Detector	**Greater Acquatica**

(List as necessary)

Offerors may obtain from the contracting officer lists of articles, materials, and supplies excepted from the Buy American Act.

(End of provision)

Offeror 2 and Offeror 3 left their respective certificates blank, meaning (presumably) that their radar detectors are made in the United States.

The next issue is whether any exception applies to Greater Acquatica. There being no exception covering that nation's products, the next step is to apply the Buy American Act criteria.

5.2.1 Using FAR Criteria (cont)

Evaluation Example (cont)

Step 2. Determine Total Offered Price

The following table lists the evaluated price of each offer, after applying all other price-related factors in the RFP.

ITEM	OFFEROR # 1	OFFEROR # 2	OFFEROR #3
Radar Detectors	$74,000	$79,000	$80,000

Step 3. Evaluate Possible Award Combinations

You have investigated and found that the Buy American Act applies to this acquisition. Offeror #2 is a large business and its offer is otherwise acceptable. Offeror #3 is a small business its offer is also acceptable.

Use Buy American Act requirements to evaluate the offer from Offeror #1 and the low domestic offer from Offeror #2. Since Offeror #2 is a large business, you must adjust offer submitted by Offeror #1, using the 6 percent factor for large business as follows:

ITEM	OFFEROR # 1	OFFEROR # 2	OFFEROR #3
Radar Detectors	$74,000	$79,000	$80,000
+ 6%	+ $4,440	N/A	N/A
Adjusted Price	$78,440	$79,000	N/A

5.2.1 Using FAR Criteria (cont)

Evaluation Example (cont)

Step 4. Make Award Decision

The foreign offer is the low offer and remains in line for award.

Had Offer #1 been in competition ONLY with Offer #3, Offer #3 would have been low. Offer #3 exceeds the foreign offer by just 8% — within the 12% margin for small business.

However, for the purposes of the Buy American Act, you only compare the "lowest acceptable domestic offer" with the "lowest acceptable foreign offer." As a result, in this case, you only compared Offer #1 with Offer #2 — and Offer #1 has the edge in that competition even with the 6 percent price adjustment.

5.2.2 Using DFARS Criteria

Introduction

DFARS 224.1

This section demonstrates application Buy American Act in supplies acquisition using the procedures delineated in DFARS 225.1.

General Evaluation Requirements

Step 1. Determine Solicitation Provisions

DFARS 252.225-7001

First, you must determine that the Buy American Act-Balance of Payments Program applies to the acquisition. The first question is whether the clause at DFARS 252.225-7001, Buy American Act and Balance of Payments Program, was required for the acquisition and incorporated in the solicitation. This clause obliges the contractor to deliver "only domestic end products," unless in its offer, it specified delivery of other end products in the Buy American Act and Balance of Payments Certificate or the Buy American Act-Trade Agreements Act Balance of Payments Program Certificate. An offer certifying that a qualifying country end product will be supplied requires the Contractor to deliver a qualifying country end product or a domestic end product.

DFARS 252.225-7000

Second, you must examine the "Buy American Certificate-Balance of Payments Program Certificate" submitted by each offeror to determine if any admit to offering a foreign product and if any list a "Nonqualifying Country End Product" on the Certificate.

For the purposes of this discussion, assume that a " Nonqualifying Country End Product" is in competition with domestic offers.

Step 2. Determine Total Offered Price

Applying all other price-related factors in the solicitation first (including any duty on the foreign product), determine the low evaluated price of the foreign offer and each of its domestic counterparts.

5.2.2 Using DFARS Criteria (cont)

General Evaluation Requirements (cont)

Step 3. Evaluate Possible Award Combinations

Remember, do not adjust offers of nondomestic products if the item or country is exempt from the requirements of the Buy American Act.

If the Act applies to the acquisition, add 50% to the cost of the lowest offer of a product from a nonqualifying country.

Step 4. Make Award Decision

Award to the offeror with the lowest evaluated price, after application of the Buy American criteria in Step 3. Settle ties in favor of domestic offers.

5.2.2 Using DFARS Criteria (cont)

Evaluation Example

Step 1. Determine Solicitation Provisions

For the purposes of this evaluation example, assume that the "Buy American Act" applies to the acquisition, with no applicable exception to the Act for the end product of the acquisition. The acquisition is for radar detectors. You have received offers from three firms—Offeror #1, Offeror #2, and Offeror #3.

As your first step, examine the Buy American—Balance of Payments Program Certificate. Having done so, you discover that Offeror #I has completed the certificate as follows:

DFARS 252.225-7000

BUY AMERICAN ACT-BALANCE OF PAYMENTS PROGRAM CERTIFICATE
(DEC 1991)

(a) Definition.
"Domestic and product," "qualifying country," "qualifying country end product," and "nonqualifying country end product" have the meanings given in the Buy American Act and Balance of Payments Program clause of this solicitation.

(b) Evaluation.
Offers will be evaluated by giving preference to domestic end products and qualifying country end products over nonqualifying country end products.

(c) Certifications.
(1) The Offeror certifies that—
(i) Each end product, except those listed in paragraphs (c)(2) or (3) or this clause. is a domestic end product; and
(ii) Components of unknown origin are considered to have been mined. produced. or manufactured outside the United States or a qualifying country.

(2) The Offeror certifies that the following end products are qualifying country end products

Qualifying Country End Products

Line Item Number	Country of Origin
_______________	_______________

(List only qualifying country end products.)

(3) The Offeror certifies that the following end products are non-qualifying country end products:

Nonqualifying Country End Products

Line Item Number	**Country of Origin (If known)**
IAA, Lens Assembly	**Lower Acquatica**

5.2.2 Using DFARS Criteria (cont)

Evaluation Example (cont)

Offeror 2 and Offeror 3 left their respective certificates blank, meaning (presumably) that their radar detectors are made in the United States.

Step 2. Determine Total Offered Price

The following table lists the evaluated price of each offer, after applying all other price-related factors in the RFP.

ITEM	OFFEROR #1	OFFEROR #2	OFFEROR #3
Lens Assembly	$60,000*	$79,000	$89,000

* Item is not duty exempt. Price includes a $1,000 duty

Step 3. Evaluate Possible Award Combinations

You have investigated and found that the Buy American Act applies to this acquisition. Use the Buy American criteria to evaluate offers as follows:

ITEM	OFFEROR #1	OFFEROR #2	OFFEROR #3
Lens Assembly	$60,000	$79,000	$89,000
+50%	+30,000	N/A	N/A
Adjusted Price	$90,000	$79,000	$89,000

5.2.2 Using DFARS Criteria (cont)

Step 4. Make Award Decision

Offer #2 is the low evaluated offer and should be selected for award.

Evaluation Example Note

DFARS 225.872-1

Note that the decision would have been different if Offer #1 had been a product produced in a "Qualifying Country," a country for which the DoD has "determined it inconsistent with the public interest to apply the restrictions of the Buy American Act-Balance of Payment Program."

If Offeror #1 had been a Qualifying Country Offer, the 50 percent adjustment factor would not have been applied. As a result, all offers must be evaluated without the adjustment factor.

ITEM	OFFEROR #1	OFFEROR #2	OFFEROR #3
Lens Assembly	$60,000	$79,000	$89,000

Without the adjustment factor, award would be made to Offeror #l.

5.3 Applying Quality-Related Factors

Overview

In This Section

This section examines the use of three methods of objectively considering quality-related factors:

TOPIC:	**SEE PAGE**
5.3.1 Blue Ribbon Contractor Programs	5-24
5.3.2 Vendor Rating Systems	5-27
5.3.3 Supplier Performance Index	5-30

Quantitative Tools

Each of these three approaches for considering quality-related costs has the same general evaluation requirements. Accordingly, those requirements will only be examined once (in the section Introduction). Unique requirements will be examined with each approach.

General Evaluation Requirements

Step 1. Determine Solicitation Provisions

You should advise potential offerors that contract award will be made based on an evaluation of both price and quality-related factors.

You have learned about three approaches for evaluating the cost of quality in the contract award decision. These were:

- Blue Ribbon Contractor Programs
- Vendor Rating Systems
- Supplier Performance Indexes

Step 2. Determine Total Offered Price

When offers are received, you must determine the total price offered for each item for each offeror.

5.3 Introduction (cont)

General Evaluation Requirements (cont)

Step 3. Evaluate Possible Award Combinations

Next, you will examine how to evaluate quality-related factors in each approach to the contract award decision. You will not examine the specific details of the development of each rating and index system, because there are no specific universal system requirements used by all agencies.

Step 4. Make Award Decision

Select the offer that provides the best combination of quality and price.

5.3.1 Blue Ribbon Contractor Programs

Introduction

Blue Ribbon Contractor Lists (BRCLs) quantitatively consider the cost of quality in the contract award decision. Placement on a Blue Ribbon Contractor List (BRCL) is typically determined independently for each Federal Stock Class (FSC).

BRCL Evaluation Requirements

When evaluating possible award combinations (Step 3), you should be aware that, once a firm is placed on the BRCL, it qualifies for special pricing consideration over firms that are not on the BRCL. The degree of that consideration should depend on the savings to the Government that result from the firm meeting BRCL standards. Personnel familiar with BRCL benefits should work with contracting management to establish the pricing adjustment. Typically, awards can be made to a BRCL firm whose offer is within 10 percent of a low offer that was not submitted by a BRCL firm.

Evaluation Example

Step 1. Determine Solicitation Provisions

Assume that the following Blue Ribbon Contractor (BRC) provision was included in the solicitation. Note that the Government may award to a BRCL offeror at a price up to 10 percent higher than that of a low offeror who is not on the BRCL.

> Award will be made to the firm whose offer provides the greatest value to the Government, price, quality, delivery performance, and other factors considered. Based on demonstrated dependable quality and delivery performance, as evidenced by membership on the Agency's Blue Ribbon Contractor List (BRCL), the contracting officer may award to a BRCL offeror at a price up to 10 percent higher than a lower offeror who is not on the BRCL.

5.3.1 Blue Ribbon Contractor Programs (cont)

Evaluation Example (cont)

Step 2. Determine Total Offered Price

In this example, four offers were received to provide the single item in the solicitation. Two were received from BRCL firms and two were from firms not on the BRCL.

OFFEROR	BRCL?	OFFER
1	Yes	$131,000
2	No	$120,000
3	No	$122,000
4	Yes	$134,000

Step 3. Evaluate Possible Award Combinations

In your evaluation, you note that the low offer, $120,000, came from a firm not on the BRCL. The lowest offer from a BRC came from Offeror #1, for $131,000.

The award criteria state that "the contracting officer may award to a BRCL offeror at a price up to 10 percent higher than a lower offeror who is not on the BRCL." To determine which firm should receive the award, you must increase the low offer by 10 percent. This will result in an evaluated price of $132,000.

5.3.1 Blue Ribbon Contractor Programs (cont)

Evaluation Example (cont)

Step 3. Evaluate Possible Award Combinations (cont)

Note that it is not reasonable to reduce the BRCL offer by 10 percent for two reasons:

- Reducing the larger BRCL offer by 10 percent would result in a larger adjustment than originally intended. For example, 10 percent of $120,000 is $12,000, but 10 percent of $131,000 is $13,100.
- Reducing unequal offers by a common percentage will result in unequal treatment. If two offers are both reduced by 10 percent the larger number will receive a larger adjustment for the same BRCL achievement. If Offer #1 is reduced by 10 percent, the reduction will be $13,100. If Offer #2 is reduced by 10 percent, the reduction will be $13,400.

OFFEROR	BRCL?	OFFER	EVALUATED PRICE
1	Yes	$131,000	$131,000
2	No	$120,000	$132,000
3	No	$122,000	$134,200
4	Yes	$134,000	$134,000

Step 4. Make Award Decision

Award should be made to Offeror #1. The evaluated price of Offer #1 is $131,000. The evaluated price of Offeror #2 is $132,000. The evaluated prices of both of the other two offers are higher.

5.3.2 Vendor Rating Systems

Introduction

Vendor Rating Systems (VRS) assign firms to one of several possible rating levels such as exceptional, acceptable, marginal, or unacceptable. The rating is then considered along with price in contractor selection.

VRS Evaluation Requirements

When evaluating possible award combinations (Step 3), consider the following:

The first VRS method described in Chapter 4 simply ranks offers based on the VRS rating.

- For example, if the system provided for ratings of exceptional, acceptable, marginal, and unacceptable, all the exceptional offers will be ranked above all the acceptable and lower rated offers.
- All offers with the same rating will be ranked by price. For example, the lowest priced exceptional rated offer would receive award over a higher priced exceptional rated offer.
- Buyers may be precluded from awarding to offerors with a marginal or unacceptable rating without special approval. Special approvals may be required for award to marginal or unacceptable offerors.
- To assure that price competition is maintained, there must be a limit established for quality rating preference. For example, the award price will not exceed the price of the low, responsible, responsive offer by more than 15 percent.

The second method of evaluation provides for consideration of the increasing costs of quality assurance. These costs are estimated for each possible quality assurance rating. Award would go to the offeror with the lowest evaluated offer, considering offered price plus estimated quality-related cost.

The third evaluation method uses the basic values of the VRS and evaluation plans tailored to specific requirements.

5.3.2 Vendor Rating Systems (cont)

Evaluation Example

The evaluation example will examine the use of the first VRS method described above. Offerors will be rated based on their VRS rating and on price. Award cannot be made at a price more than 15 percent higher than the price of the low, responsive, responsible offeror.

Step 1: Determine Solicitation Provisions

Assume that the solicitation included the following provision:

> Award will be made to the firm whose offer provides the greatest value to the Government, price, quality, delivery, performance, and other factors considered. Both price and the offeror's Vendor Rating System (VRS) will be considered in offer evaluation. Award may be made to a firm with a higher priced, higher rated offer.

Step 2. Determine Total Offered Price

Four offers were received:

OFFEROR	VRS RATING	OFFER
1	Exceptional	$142,000
2	Acceptable	$123,000
3	Acceptable	$122,000
4	Exceptional	$139,000

5.3.2 Vendor Rating Systems (cont)

Evaluation Example (cont)

Step 3. Evaluate Possible Award Combinations

Step 3A. Begin your evaluation of the offers by determining the low priced offeror. Offeror #3 is low at $122,000.

Step 3B. If other offerors have a higher VRS Rating, determine the highest price that you could pay to purchase the item from a higher-rated firm. If the limit is a 15 percent premium, multiply the low offer by 1.15.

In this example, you would consider any higher rated offer with a price less than or equal to $140,300 ($122,000 x 1.15).

Step 3C. Identify the highest VRS rated offers that have a price less than or equal to the highest price you could pay. If you identify more than one offer in that VRS rating category, further identify the lowest priced offer in the category.

In this example, only two offers have a higher rating, Offer #1 and Offer #4. Of the two, only Offer #4, $139,000, is less than the maximum price that you can pay, $140,300.

Step 4. Make Award Decision

Award to Offeror #4. Offeror #4 submitted the lowest offer in the Exceptional VRS rating, and it was within 15 percent of the low offeror.

5.3.3 Supplier Performance Index

Introduction

The SPI is a factor that you can use to make an estimate of the true cost of a product to the Government, considering price and quality-related costs:

$$SPI = \frac{\text{Extended Purchase Price + Quality Related Costs}}{\text{Extended Purchase Price}}$$

SPI Evaluation Requirements

Use of the Supplier Performance Index (SPI) depends on the calculation of a contractor SPI. The SPI can either be calculated for all products supplied by the firm or by Federal Stock Class (FSC). The SPI is not developed by the contracting office. Contracting personnel should have an input on how the SPI is developed, but actual data must be supplied by personnel involved with product receipt and use.

Some provision must be made for the evaluation of the offers from firms that do not have an assigned SPI. One method is to assign an SPI equal to the average of all firms, or all firms in that FSC. Assignment of an average SPI will provide the firm with an opportunity to win the award. Evaluating such an offer without adjustment would be the same as assigning an SPI of 1.00. This is the same rating a firm with perfect quality would receive—an unfair advantage for a firm with which you have no experience.

Evaluation Example

Step 1. Determine Solicitation Provisions

Assume that the following provision was included in the solicitation:

> Award will be made to the firm whose offer provides the greatest value to the Government, price, quality, delivery performance, and other factors considered. Price evaluation will be performed using the offeror's Supplier Performance Index (SPI) for the appropriate Federal Stock Class (FSC). If the offeror does not have an SPI assigned, the contracting officer will assign, for purposes of evaluation, an SPI equal to the average SPI of all firms in that FSC.

5.3.3 Supplier Performance Index (cont)

Example Evaluation (cont)

Step 2. Determine Total Offered Price

Three offers have been received:

OFFEROR	OFFEROR'S SPI	OFFER

1	1.15	$142,000
2	1.60	$123,000
3	1.20	$122,000

Step 3. Evaluate Possible Award Combinations

Given the offers and the SPI for each offeror, evaluation involves simply multiplying the offer by the offeror's SPI.

OFFEROR	SPI	OFFEROR'S SPI	EVALUATED PRICE
1	1.15	$142,000	$156,400
2	1.60	$123,000	$198,400
3	1.20	$122,000	$156,000

Step 4. Make Award Decision

The lowest evaluated offer is $156,000. Accordingly, award would go to Offeror #3.

5.4 Applying Government Furnished Production And Research Property Factors

Overview

In this section

This section examines the following techniques for the evaluation of offers involving GFP:

TOPIC	SEE PAGE
5.4.1 Eliminate Competitive Advantage	5-33
5.4.2 Consider Costs and Savings to the Government	5-36

5.4.1 Eliminate Competitive Advantage

Introduction

When the contracting officer determines that there are competitive sources and that one or more sources may have a competitive advantage due to possession of GFP, you must include in the solicitation to consider the of the competitive advantage related to the use of GFP.

General Evaluation Requirements

FAR 45.205

Step 1. Determine Solicitation Provisions

Follow the requirements of FAR 45.205 in developing provisions for considering competitive advantage in offer evaluation. These provisions must describe the evaluation procedures to be used, including the rental charges or equivalents to be evaluated, and information the offeror will be required to submit with the offer. The required offeror information submission must include:

- A list or description of all Government production or research property that the offeror (or subcontractors) proposes to use rent free.
- Identification of any facilities contracts which include the identified property.
- Date when property will be needed and concurrent use of the property on other contracts. Data will be used for the proration of rent or rent equivalents for offer evaluation purposes.
- The amount of property rental cost that would be charged if the GFP were not used.

Step 2. Determine Total Offered Price

When offers have been received, you must determine the total price offered for each item for each offeror. You must also identify what GFP each offeror is proposing to use on the contract and the estimated period of use.

Step 3. Evaluate Possible Award Combinations

Before you evaluate the pricing aspects of the use of GFP on the contract, contact the contracting officer responsible for administration of the GFP to confirm that the property is available for use on the contract.

5.4.1 Eliminate Competitive Advantage (cont)

General Evaluation Requirements (cont)

Step 3. Evaluate Possible Award Combinations (cont)

Follow the offer evaluation procedures set forth in the solicitation. The two general methods of evaluation are adjustments for evaluation purposes only, and charging contractor's rent. These are described in Chapter 4, and summarized as follows:

FAR 52.245-9

- If a rental equivalent factor is used, it must be equal to the rent allocable to the proposed contract that would have been charged for the GFP. Compute the rental factor using the terms of FAR 52.245-9, Use and Charges.

FAR 45.403
FAR 52.245-9

- If using the rental equivalent is not practical, and the competitive advantage is to be eliminated by charging rent, any offeror or subcontractor may use the GFP after obtaining written approval from the cognizant contracting officer. Rent in accordance with FAR 45.403 and 52.245-9 should be included in each offer.

Step 4. Make Award Decision

Whichever method you use, select the offer that provides the lowest evaluated price.

Evaluation Example

Step 1. Determine Solicitation Provisions

In this evaluation example, you will adjust for GFP award purposes only. Assume that the following provision was included in the solicitation.

FAR 52.245-9

> For purposes of offer evaluation, any offer predicated on rent-free use of Government Furnished Property (GFP) will be adjusted to eliminate possible competitive advantage. The adjustment will be made using a rental equipment adjustment factor equal to the allocable rent that would otherwise be charged for the GFP. Rent will be computed in accordance with FAR 52.245-9, Use and Charges.

5.4.1 Eliminate Competitive Advantage (cont)

Evaluation Example

Step 2. Determine Total Offered Price

Two offers were received in response to the solicitation.

OFFEROR	OFFER
1	$352,000
2	$347,000

Only Offeror #2 proposed rent-free use of GFP. This proposal consisted of rent-free use of one APEX Model 5209, Ser #14345089 machine tool, for a period of one month during production.

Step 3. Evaluate Possible Award Combinations

You should contact the contracting officer responsible for the GFP to ensure that the proposed GFP will be available for use on your contract, as requested by the offeror.

FAR 52.245-9

Assume that the cognizant contracting officer further advises you that the equipment is less than two years old and cost $200,000. Use the requirements of FAR 52.245-9 to determine that a fair and reasonable rental cost is $6,000.

Using the $6,000 in evaluation, you find:

OFFEROR	OFFER	GFP RENTAL EQUIVALENT	EVALUATED PRICE
1	$352,000	---	$352,000
2	$347,000	$6,000	$353,000

Step 4. Make Award Decision

Based on the evaluation above, you should award to Offeror #1. This will result in the lowest evaluated price to the Government.

5.4.2 Consider Costs and Savings to the Government

Introduction

FAR 45.202-3

If furnishing GFP to a contractor will result in measurable savings or direct costs to the Government, you must consider additional factors when evaluating offers. The types of costs and savings that you should consider are outlined in FAR 45.202-3, Costs and Savings.

General Evaluation Requirements

Step 1. Determine Solicitation Provisions

You must specify the dollar value of savings in the solicitation and use this data in the evaluation. You must specify direct costs as dollar values or as formulas.

You do not need to make any adjustment for costs that will be borne by the contractor. For example, if, under the terms of the solicitation, the contractor will bear the transportation cost of furnishing the GFP or the cost of making it suitable for use, you will not use additional evaluation factors related to those costs.

Step 2. Determine Total Offered Price

When offers have been received, you must determine the total price offered for each item for each offeror. You must also review each offer to determine whether it specifies use of the identified GFP.

Step 3. Evaluate Possible Award Combinations

In offer evaluation, you must identify the costs and savings in each offer related to GFP. Use the costs and savings specified in the solicitation.

Step 4. Make Award Decision

Make award to the firm whose offer has the lowest evaluated price. Include consideration of the costs and savings to the Government that result from the use of the Government production and research property.

5.4.2 Consider Costs and Savings to the Government (cont)

Evaluation Example

Step 1. Determine Solicitation Provisions

Assume that the provision below was included in the solicitation. The amount of $9,000 represents the cost of deactivating and placing the tools in storage and maintaining them there for the period of the contract. A complete list of tools is included in solicitation Paragraph L-XX.

> In addition to any other proposal adjustments, $9,000 will be deducted from any offers proposing to use the GFP identified in Solicitation Paragraph L-XX. The $9,000 represents the costs that the Government will avoid if the identified GFP is not placed in storage.

Step 2. Determine Total Offered Price

Two offers have been received. Both offers propose use of the tooling described in solicitation Paragraph L-XX. Offer #1 includes the estimated costs of relocating the tooling from the plant of Offeror #2. Offer #2 does not propose relocation costs because the tooling is already located at that offeror's plant.

OFFEROR	OFFER
1	$364,000
2	$370,000

Step 3. Evaluate Possible Award Combinations

Both offers propose use of the tooling described in solicitation Paragraph L-XX. At a result, the $9,000 savings identified in the solicitation will be deducted from the price offered by each of the offerors. Since the cost of relocating the tooling is included in Offer #1, no further adjustment is required.

5.4.2 Consider Costs and Savings to the Government (cont)

Evaluation Example (cont)

Step 3. Evaluate Possible Award Combinations (cont)

OFFEROR	OFFER	GOVERNMENT SAVINGS	OFFER EVALUATION
1	$364,000	$9,000	$355,000
2	$370,000	$9,000	$361,000

Step 4. Make Award Decision

In your evaluation, you should deduct $9,000 from both offers. As a result, there would be no change in the dollar difference between the two offers. Award will be made to Offeror #1.

5.5 Applying Transportation Cost Factors

Introduction

Whenever offers are not submitted f.o.b. destination, transportation-related costs must be considered as part of bid/offer evaluation.

General Evaluation Requirements

FAR 47.304-1(a)
FAR 47.304-1(b)

Step 1. Determine Solicitation Provisions

You must determine general f.o.b. terms on the basis of overall costs, giving due consideration to the criteria presented in FAR 47.304.

After you make your determination, you must specify in the solicitation whether, at their discretion, offerors must submit offers:

- f.o.b. origin
- f.o.b. destination
- both f.o.b. origin and f.o.b. destination
- either f.o.b. origin or f.o.b. destination.

FAR 47.304-1

The general advantages of both f.o.b. origin and f.o.b. destination terms are examined in FAR 47.304-1.

Specific points to consider in solicitation preparation are addressed in:

- FAR 47.305-2, Solicitations f.o.b. Origin and f.o.b. Destination-Lowest Overall Cost
- FAR 47.305-3, F.o.b. Origin Solicitations
- FAR 47.305-4, F.o.b. Destination Solicitations
- FAR 47.305-5, Destination Unknown
- FAR 47.305-6, Shipments to Ports and Air Terminals
- FAR 47.305-7, Quantity Analysis, Direct Delivery, and Reduction of Cross Hauling and Backhauling
- FAR 47.305-8, Consolidation of Small Shipments and the Use of Stopoff Privileges
- FAR 47.305-9, Commodity Description and Freight Classification
- FAR 47.305-10, Packing, Marking, and Consignment Instructions
- FAR 47.305-11, Options in Shipment and Delivery
- FAR 47.305-12, Delivery of Government-Furnished Property
- FAR 47.305-13, Transit Arrangements
- FAR 47.305-14, Mode of Transportation
- FAR 47.305-15, Loading Responsibilities of Contractors

5.5 Applying Transportation Cost Factors (cont)

General Evaluation Requirements (cont)

- FAR 47.305-16, Shipping Characteristics
- FAR 47.305-17, Returnable Cylinders

Standard delivery terms and related contract requirements are described in FAR 47.303.

- FAR 47.303-1, F.o.b. Origin
- FAR 47.303-2, F.o.b. Origin Contractor's Facility
- FAR 47.303-3, F.o.b. Origin, Freight Allowed
- FAR 47.303-4, F.o.b. Origin, Freight Prepaid
- FAR 47.303-5, F.o.b. Origin, With Differentials
- FAR 47.303-6, F.o.b. Destination
- FAR 47.303-7, F.o.b. Destination, Within Consignee's Premises
- FAR 47.303-8, F.a.s. Vessel, Port of Shipment
- FAR 47.303-9, F.o.b. Vessel, Port of Shipment
- FAR 47.303-10, F.o.b. Inland Carrier, Point of Exportation
- FAR 47.303-11, F.o.b. Inland Point of Importation
- FAR 47.303-12, Ex Dock, Pier, or Warehouse, Port of Importation
- FAR 47.303-13, C&F Destination
- FAR 47.303-14, C.I.F. Destination
- FAR 47.303-15, F.o.b. Designated Air Carrier's Terminal, Point of Exportation
- FAR 47.303-16, Designated Air Carrier's Terminal, Point of Importation
- FAR 47.303-17, Contractor-Prepaid Commercial Bills of Lading, Small Package Shipments

Step 2: Determine Total Offered Price

When offers have been received, you must determine the total price offered for each item for each offeror. You must also examine each offer to determine if it complies with the terms identified in the solicitation.

5.5 Applying Transportation Cost Factors (cont)

General Evaluation Requirements (cont)

FAR 47.306-2

Step 3. Evaluate Possible Award Combinations

Evaluate offers using the specific criteria set forth in the solicitation. In evaluating transportation costs, you must use the lowest available freight rates and related accessorial and incidental charges that are:

- In effect on, or become effective before, the expected date of initial shipment
- On file or published on the date of bid opening

If rates or related charges become available after the bid opening or the due date of offers, do not use them in evaluation unless they cover transportation for which no applicable rates were in effect at the time of bid opening or the due date of offers.

Step 4. Make Award Decision

Award to the firm whose offer provides the lowest evaluated price to the Government under the terms of the solicitation. Consider both price and allowable transportation cost in your price evaluation.

Evaluation Example

Step 1. Determine Solicitation Provisions

Assume that the following provision was inserted in the solicitation:

FAR 47.306-2

> Award will be made f.o.b. destination or f.o.b. origin to the offeror with the lowest evaluated price. F.o.b. origin offers will be evaluated on the basis of unit price bids plus transportation cost to destination based on the most economical rates available to the Government, in accordance with FAR 47.306-2.

5.5 Applying Transportation Cost Factors (cont)

Evaluation Example (cont)

Step 2. Determine Total Offered Price

Three offers were received. One offered the item f.o.b. destination. The others offered the item f.o.b. origin.

OFFEROR	F.O.B. POINT	OFFER
1	Origin	$435,000
2	Destination	$450,000
3	Origin	$436,000

Step 3. Evaluate Possible Award Combinations

FAR 47.306-2

From the cognizant transportation officer, obtain the lowest available transportation cost and incidental charges that are:

- In effect on, or effective before, the expected date of initial shipment, AND
- On file or published on the date of the bid opening.

The specific shipping costs are shown below, for each offeror:

OFFEROR	F.O.B. POINT	OFFER	TRANSPORTATION COST	EVALUATED PRICE
1	Origin	$435,000	$2,600	$437,600
2	Destination	$450,000	N/A	$450,000
3	Origin	$436,000	$1,500	$437,500

Step 4. Make the Award

Make award to the offeror with the lowest evaluated price, Offeror #3.

5.6 Applying Energy Conservation and Efficiency Factors

Introduction

FAR 23.203

Whenever the results would be meaningful, practical, and consistent with agency programs and needs, you must apply energy criteria to price-related decisions.

General Evaluation Requirements

FAR 23.203

Step 1. Determine Solicitation Provisions

In applying energy criteria, you must consider energy use and efficiency labels on all covered products and energy efficiency standards as they become available.

Step 2. Determine Total Offered Price

When offers have been received, determine the total price offered for each item for each offeror. You must assure that the offer contains the information required by the solicitation to evaluate energy-related factors in price analysis.

Step 3. Evaluate Possible Award Combinations

Evaluate offers using the specific criteria established in the solicitation. Both price and energy-related costs must be considered in price evaluation.

Step 4. Make Award Decision

Award to the firm whose offer provides the lowest evaluated price to the Government under the terms of the solicitation.

5.6 Applying Energy Conservation and Efficiency Factors (cont)

Evaluation Example

Step 1. Determine Solicitation Provisions

You are acquiring 1,000 hot water heaters with a 50 gallon capacity. Because of extreme hard water conditions in area water systems, technical personnel estimate useful life at five years. Assume that the following provision was included in the solicitation:

> Award will be made to the firm whose offer will provide the lowest total discounted cost of acquisition and ownership to the Government during the first year of operation, considering price and energy cost. Estimates of energy cost will be based on the Energy Use and Efficiency Label provided by the manufacturer under 42 U.S.C. 6296.

Step 2. Determine Total Offered Price

Two offers were received. The prices shown below are for 1,000 units. Annual energy cost is the total for 1,000 units. They are based on estimates from the Energy Use and Efficiency Label figures provided by each offeror and are calculated as follows:

$$\text{Energy Cost} = \text{Kilowatt Hours Used Per Hour of Operation} \times \text{Projected Hours of Operation} \times \text{Energy Cost Per Kilowatt Hour}$$

OFFEROR	OFFER	ANNUAL ENERGY COST
1	$360,000	$560,000
2	$370,000	$520,000

Step 3. Evaluate Possible Award Combinations

As stated in the solicitation provision, expenditures and receipts must be "discounted." In terms of your analysis, discounting refers to adjustment for the net present value of a dollar expenditure or receipt at a later time.
A dollar spent at the beginning of Year 1 would not be adjusted.

5.6 Applying Energy Conservation and Efficiency Factors (cont)

Evaluation Example (cont)

Step 3. Evaluate Possible Award Combinations (cont)

- If the interest rate is 10 percent, the net present value of a dollar to be spent or received at the end of one year is $.90909 (i.e., today the value of $1.00 to be received one year from now is $.90909). In other words, if the interest rate is 10 percent, $.90909 invested at 10 percent will be worth approximately $1.00 at the end of one year.

Using this net present value analysis, financial experts in your organization have calculated that the discounted value of an annual energy cost for five years is the annual cost multiplied by 3.97581. The net present value of an annual cost of $1.00 for five years would be $3.97581 (1 x 3.97581). The net present value of $100 for five years would be $397.581 (100 x 3.97581). The net present value of $1,000 would be $3,957.81 (1,000 x 3.97581).

In accordance with the solicitation provision evaluate the offers by summing proposed price and net present value of the five year energy cost. Note that the energy cost for one year is greater than the price of the heaters.

OFFEROR	OFFER	NET PRESENT VALUE OF 5-YEAR ENERGY COST	EVALUATED PRICE
1	$36,000	$56,000 x 3.97581 = $222,645.36	$258,645.36
2	$37,000	$52,000 x 3.97581 = $206,742.12	$243,742.12

Step 4. Make Award Decision

Make award to the offeror with the lowest evaluated price, including consideration of annual energy-related costs for five years. In this case, Offeror #2 wins the award.

5.7 Consider Lease vs. Purchase

Introduction

FAR 7.401

In developing specific provisions, consider the importance of the types of cost identified in FAR.

General Evaluation Requirements

Step 1. Determine Solicitation Provisions

Define in the solicitation what costs you will consider in the award and how you will consider these costs. For example:

- Will you adjust a flow of expenditures over time for an imputed (assumed) cost of money?
- Will you adjust expenditures to consider the probability of incurrence?

Step 2. Determine Total Offered Price

When offers have been received, you must assure that all required data is included in each offer.

Step 3. Evaluate Possible Award Combinations

Evaluate offers using the specific criteria established in the solicitation.

Step 4. Make the Award

Award to the firm whose offer provides the lowest evaluated price to the Government under the terms of the solicitation.

5.7 Consider Lease vs. Purchase (cont)

Evaluation Example

Step 1. Determine Solicitation Provisions

You have a requirement for material handling equipment to replace existing equipment that is beyond repair. Even with the new equipment, the present facility will close in 24 months. At that time, purchased equipment will be sold at auction. Rental equipment will be returned to the vendor. Because of the limited period of use, you are soliciting offers for lease as well as for purchase. You expect the operation and maintenance cost to be the same with all items offered, as a result you will only consider the costs related to acquisition and disposal.

Assume that the following provision was included in the solicitation:

> The Government will acquire the equipment identified in Section B by either lease or purchase. The method of acquisition and the successful offeror will be determined based on the lowest discounted total cost to the Government for acquisition and disposal. Operation and maintenance costs will not be considered in offer evaluation.

Step 2. Determine Total Offered Price

Offers were received from two firms. One offer was based on Government purchase of the item, the other on Government lease. The proposed lease is for a two-year period.

OFFEROR	GOVERNMENT EXPENDITURE BEGINNING OF YEAR 1	GOVERNMENT EXPENDITURE END OF YEAR 1
1 (Purchase)	$46,000	N/A
2 (Lease)	$20,500*	$20,500

* The lease payment is due at the beginning of each year. For analysis purposes, the beginning of Year 2 is the same as the end of Year 1.

5.7 Consider Lease vs. Purchase (cont)

Evaluation Example (cont)

Step 3. Evaluate Possible Award Combinations

The solicitation award provision states that "the method of acquisition and the successful offeror will be determined based on the lowest discounted total cost to the Government for acquisition and disposition."

To evaluate the cost to the Government, you must consider all of the relevant costs and receipts that would result from purchase or lease of the equipment.

For the purchase, there would be an expenditure of $46,000 at the beginning of Year 1 to purchase the equipment. There would also be a receipt at the end of Year 2 when the equipment is sold at auction. Your best estimate of the sale value is $6,000.

For the lease, there would be an expenditure at the beginning of Year 1 for the first 12-month lease cost. There would be a second expenditure at the end of Year 1 for the second 12-month lease cost. There would be no receipt or expense at the end of Year 2.

Offeror	Government Expenditure Beginning of Year 1	Government Expenditure End of Year 1	Government Receipt End of Year 2
1 (Purchase)	$46,000	N/A	$6,000
2 (Lease)	$20,500	$20,500	N/A

5.7 Consider Lease vs. Purchase (cont)

Evaluation Example (cont)

As stated in the solicitation provision, expenditures and receipts must be "discounted." In terms of your analysis, discounting refers to adjustment for the net present value of a dollar expenditure or receipt at a later time.

- A dollar spent at the beginning of Year 1 would not be adjusted.
- If the interest rate is 10 percent, the net present value of $1.00 spent at the end of Year 1 would be $.90909 (i.e., $.90909 invested at 10 percent for one year will be worth approximately $1.00 at the end of one year).

  At the 10 percent interest rate, the net present value of a dollar to be spent or received at the end of Year 2 is $ .82645 (i.e., $.82645 invested at 10 percent for two years will be worth approximately $1.00 at the end of the two years).

Using the established values for net present value at the end of one year and at the end of two years, the net present value of the purchase and lease options would be:

Offeror	Government Expenditure Beginning of Year 1	Government Expenditure End of Year 1	Government Receipt End of Year 2	Evaluated Cost to the Government
1 Purchase	$46,000	N/A	$4,959 ($6,000 x .82645)	$41,041
2 Lease	$20,500	$18,636 ($20,500 x .90909)	N/A	$39,136

Step 4. Make Award Decision

Make award to the offeror with the lowest evaluated cost to the Government, Offeror #2.

Chapter Vignette

Widget Acquisition (cont)

You decide to follow a four-step procedure to use BRCL to consider quality-related costs in making your award decision:

Step 1. Determine Solicitation Provisions
Step 2. Determine Offered Price
Step 3. Evaluate Possible Award Combinations
Step 4. Make Award Decision

Step 1. Determine Solicitation Provisions

Your evaluation will be based on the following award criteria contained in the solicitation.

"Based on demonstrated dependable quality and delivery performance, as evidenced by membership on the agency's Blue Ribbon Contract List (BRCL), the contracting officer may award to an offeror at a price up to 10 percent higher than a lower offer who is not on the BRCL."

Step 2. Determine Offered Price

You have received four responsive offers from responsible firms. Two are from offerors on the BRCL.

OFFEROR	BRCL?	OFFER
1	No	$178,000
2	No	$176,800
3	Yes	$190,120
4	Yes	$195,600

Step 3. Evaluate Possible Award Combinations

OFFEROR	BRCL?		EVALUATED PRICE
1	No	OFFER	$195,800
2	No	$176,800	$194,480
3	Yes	$190,120	$190,120
4	Yes	$195,600	$195,600

Step 4. Make Award Decision

Using the evaluated prices, you tentatively select the offer with the lowest evaluated price for award. It appears that award to Offeror #3 is most advantageous to the Government. However, you want to assure yourself that the price is reasonable before you make the final award decision, because the price is $8,820 higher than your preliminary price estimates.

Comparing Prices **CHAPTER 6**

Chapter Vignette

Widget Acquisition (cont)

You have tentatively selected a firm for contract award, but you must be sure that the price of the apparent successful offer is fair and reasonable. To make that decision, you must understand the process of price comparison in performing price analysis.

This chapter will outline the comparison process and examine specific considerations involved with using different bases for price analysis.

Learning Objectives

At the End of This Chapter

At the end of this chapter you will be able to:

Classroom Learning Objective 6/1
Select prices for comparison.

Classroom Learning Objective 6/2
Identify factors that affect comparability.

Classroom Learning Objective 6/3
Determine the effect of the factors identified.

Classroom Learning Objective 6/4
Adjust the prices selected for comparison .

Classroom Learning Objective 6/5
Compare adjusted prices to the offer in line for award.

6.0 Introduction

In This Chapter

In this chapter, you will learn how to make the price comparisons required for effective price analysis.

SECTION	DESCRIPTION	SEE PAGE
6.0	Introduction	6-3
6.1	Selecting Prices For Comparison	6-8
	6.1.1 Competitive Prices	6-11
	6.1.2 Commercial Prices	6-13
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6.2	Identify Factors That Affect Comparability	6-20
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6.5	Comparing Adjusted Prices	6-29

(Continued on next page)

6.0 Introduction (cont)

Procedural Steps: The following figure shows where this chapter fits into the conduct of a price analysis.

6.0 Introduction (cont)

Comparisons in Price Analysis

Price analysis:

- is the process of examining and evaluating a proposed price to determine if it is fair and reasonable without evaluating its separate cost elements and proposed profit
- **always** involves some form of comparison with other prices.

Hence, you compare prices to determine whether the price for the apparent successful offer is fair and reasonable. The base for your comparison is a price that you feel is a reasonable estimate of the price that you should pay -- the "should-pay" price.

Should-Pay Price

The should-pay price is the price that, in your best judgment, the Government should reasonably expect to pay for the deliverable based on available information concerning competitive offers, historical prices, commercial prices, pricing yardsticks, and Independent Government Estimates.

Bear in mind that your should-pay price is an **estimate**. Being an estimate, it is by definition **inexact.** If you have done a good job of price analysis, your should-pay price will probably be close to the mark. Still, don't be dogmatic about your estimate — to the point of rejecting offers that are close to, but not exactly at, your should-pay estimate of the price.

If the apparent successful offer is **significantly** higher or lower than your estimate:

- Determine **WHY** there is a significant variance between the should-pay price and that offer and then
- Make the critical price related decisions in awarding contracts through sealed bidding or negotiations .

6.0 Introduction (cont)

Comparability

Comparability is the quality or state of being comparable. Products do not have to be alike to be compared. Any two things can be compared, but the comparison may show that they have no characteristics in common. Thus, if your purpose is to pass judgment on the price of at least one of the two, the comparison will have been a waste of time if they are unlike in every way.

For price analysis, a working definition of comparable is having enough similar characteristics or qualities to make comparison useful.
The more similar the items are, the easier the comparison. If your examination discloses significant differences, you may need to quantify the differences (e.g., acquisition of different products, at different times, or in different places) and make adjustments before you can reach valid conclusions about one price against another. The greater the dissimilarities and the more subjective your adjustment, the greater the possibility for doubts about your conclusions and the less likely that your analysis will be persuasive.

Multiple Comparisons

Use the information gathered during your market research to make multiple comparisons in determining price reasonableness and increase confidence in your pricing decision.

For example, adequate price competition is normally considered one of the best bases for price analysis. However, you can have apparent competition and still have prices that are unreasonably high. How would you know? You must consider other bases for price analysis (e.g., historical prices, catalog prices, or market prices).

The number of comparisons that you consider should depend on the availability of information and the pricing risk involved in the acquisition.

- If the information is readily available in a form that can be used for price analysis, why not consider it? A quick comparison will increase your confidence of price reasonableness.
- If the price is large or you still have concerns about price reasonableness after your initial comparison, the risk involved makes it particularly important to consider other comparisons.

6.0 Introduction (cont)

Comparison Steps

Each different comparison will involve different information and some bases will require substantial amounts of adjustment prior to making your analysis. However, the comparison process is described in five steps outlined below.

STEPS	ACTION	QUESTIONS TO CONSIDER
1	Select prices for comparison: • Competitive prices • Commercial prices • Historical prices • Price estimates based on pricing yardsticks • Independent Government Estimates	Would this comparison be valid? Are more comparable prices available?
2	Identify factors that affect comparability.	Have I considered all potentially significant factors, including differences in — • Market conditions • Quantity or size • Geographic location • Purchasing power of the dollar • Extent of competition • Technology • Terms and conditions (e.g., differences in features or capabilities; delivery lead-times; one-time costs, etc.)
3	Determine the potential impact of these factors on prices selected for comparison.	How substantial is the impact? In view of these factors and their impact, would the contemplated comparison have any credibility?
4	Adjust prices selected for comparison.	Have I accounted for all factors that can be dollarized? What techniques should be applied in making the adjustment? How much reliance can I place on the resulting estimate?
5	Compare adjusted prices to the offer in line for award.	How much weight should I place on each comparison? If adjusted prices differ substantially from the apparent successful offer, what price should the Government reasonably expect to pay? What accounts for differences between this should-pay price and the offer in line for award?

6.1 Selecting Prices For Comparison

Overview

In This Section

This Section identifies and defines five potential bases for price analysis. After defining each base, special considerations for using each base are outlined.

TOPIC	SEE PAGE
6.1.1 Competitive Prices	6-11
6.1.2 Commercial Prices	6-13
6.1.3 Historical Price	6-15
6.1.4 Pricing Yardsticks	6-16
6.1.5 Independent Government Estimates	6-17

Potential Bases

FAR 15.805-2

You may select any or all of the following prices for price analysis comparisons:

- Competitive prices
- Commercial prices
- Historical prices
- Pricing yardsticks (i.e., price estimates based on pricing relationships)
- Independent Government Estimates

In the above list, the term “commercial prices” includes catalog prices, market prices, prices set by law or regulation, and any other commercial prices that you may use in price analysis.

One of the six bases for price analysis identified in the FAR is “prices for the same or similar items obtained through market research.” Because market research can span commercial prices, historical prices, pricing yardsticks, and Independent Government Estimates, this base for price analysis will not be considered separately in this chapter.

6.1 Overview (cont)

Selecting Bases For Comparison

Types of comparisons used in price analysis typically vary with the estimated dollar value of the contract.

FAR 13.603(a)

Micro-purchases. You may solicit only one quote, if you determine that the quoted price is reasonable. Evidence of price reasonableness might include:

- Previous prices paid for the same or similar items purchased competitively.
- Knowledge of the supply or service gained from published prices in catalogs, newspapers, and other sources of market information.

If you suspect that the quoted price is not reasonable or you do not have comparable pricing information readily available, take more aggressive action to collect the information necessary to determine price reasonableness. Normally, you will solicit additional quotes by phone or fax.

FAR 13.106
FAR 5.201
FAR 5.202

Other Simplified Acquisitions. Use FACNET to make other simplified acquisitions using FACNET, unless FACNET is not practicable or cost effective. If you do not use FACNET, solicit competitive quotes, unless you determine that only one source is reasonably available. Normally, you can obtain the maximum practicable competition without soliciting sources from outside the local trading area.

- Unless an exception applies, you must synopsize any non-FACNET contract action that exceeds $25,000 in the Commerce Business Daily.

6.1 Overview (cont)

Selecting Bases For Comparison (cont)

- If the contract action does not exceed $25,000, you should obtain competition from at least three sources, if three sources are reasonably available. Consider the following factors when determining the number of sources to solicit:
  - ◊ The nature of the article or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or is relatively noncompetitive.
  - ◊ Information obtained in making recent purchases of the same or similar item.
  - ◊ The urgency of the proposed purchase.
  - ◊ The dollar value of the proposed purchase.
  - ◊ Past experience concerning specific dealers' prices.

While not required by the FAR, logic requires that you consider any readily available bases for price analysis (e.g., recent price history and commercial prices). If you do not receive adequate price competition or you suspect that competitive prices are not reasonable, you will need to rely even more on these other bases of price analysis

Contracts over the Simplified Acquisition Threshold. Consider every type of comparison which you believe provides a valid should-pay price.

- Competitive prices
- Commercial prices
- Historical prices
- Pricing yardsticks (i.e., price estimates based on pricing relationships)
- Independent Government Estimates

For example, if you have data on historical prices and have reason to believe that these data reflect good prior decisions on price reasonableness, then compare the apparent successful offer to historical prices. If you have reason to believe that historical prices were not reasonable, then give little or no weight to historical price comparisons as you perform your price analysis. If you have no price history, you must rely on other comparison bases in making your price analysis.

6.1.1 Competitive Prices

Definition

FAR 15.804-1(b)

Competitive prices are the evaluated offers received from other offerors under conditions of adequate price competition. Remember that you have adequate price competition when the following conditions are met:

- There are two or more responsible offerors,
- The offerors are competing independently for contract award,
- Priced offers are responsive to the Government's expressed requirement (in negotiation offers must be technically within the competitive range)
- Award will be made to a responsible offeror whose proposal offers either the greatest value to the Government (price must be a substantial factor in source selection) or the lowest evaluated price; and
- You have not found that the price of the otherwise successful offeror is unreasonable.

Using Competitive Prices

You can use any offer that you would consider for contract award as a base for price analysis. If you have more than one competitive offer, you could use more than one offer in your analysis.

Do not use the price from any offer that you would not consider for contract award as a base for price analysis.

- Never use an offer from a firm that you have determined is nonresponsible.
- In sealed bidding, never use a nonresponsive bid.
- In negotiations, never use a price from a proposal that is technically outside the competitive range.

6.1.1 Competitive Prices (cont)

Special Concerns

Price competition is generally considered to be one of the best bases for price analysis because all offerors are submitting offers to meet the same Government requirement during the same period of time. However, you should still consider other relevant pricing information, particularly information (e.g., price history) that is readily available. You should normally place less reliance on competition when you encounter situations such as the following:

- The solicitation was made under conditions that unreasonably denied one or more known and qualified offerors an opportunity to compete.
- The apparent successful offeror has such a decided advantage that it is practically immune from competition.
- Other price comparisons (or a cost realism analysis) indicate that the apparent successful offer may be unreasonable (too high or too low).

Also be careful when Government requirements permit offerors to propose widely different technical approaches to contract performance. For example, a ceramic mug and a paper cup may both meet a requirement to hold 8 ounces of coffee, but that does not mean that $1.00 price for a paper cup is reasonable because it is less than a $5 price for a ceramic mug. Even if no other offeror is proposing to provide a paper cup, the key element of your price analysis should be to compare the paper cup offer with prices paid for similar paper cups.

6.1.2 Commercial Prices

Definition

Commercial prices are prices being paid by the general public for a product. The circumstances of your purchase may be different from the commercial sales, but data on commercial sales can provide valuable information for use in contract pricing.

"Horror stories" about overpricing of Government contracts seem to occur every few years. Most could have been avoided if contracting officers had considered the price that the general public would be willing to pay for the product. Contractors might have logical reasons for charging $435 to provide a common hammer as part of a major systems contract. But, as the Government's agent, could you explain to the general public why you paid $435 for a hammer that anyone could buy in any hardware store for less than $35?

Using Commercial Prices

FAR 15.804-1(b)

You can classify the sources of commercial pricing information into four categories:

- **Catalog prices** -- prices taken from a catalog, price list, schedule, or other verifiable and established record that is regularly maintained by a manufacturer or vendor and is published or otherwise available for customer inspection. For pricing purposes (but not cost or pricing data exception purposes), you can consider catalog pricing information from the firm submitting the offer and/or catalog pricing information from other firms offering similar products.
- **Market prices** -- prices established in the course of ordinary and usual trade between buyers and sellers free to bargain that can be substantiated from sources independent of the offeror. Normally, market pricing information is taken from independent market reports, but a market price could be established by surveying the firms in a particular industry or market.
- **Prices set by law or regulation** -- prices based on pronouncements in the form of periodic rulings, reviews, or similar actions of a governmental body, or embodied in the law.
- **Other commercial item prices** -- commercial item prices established using a means other than those described above. For example, an offeror might provide information on the prices charged commercial customers over a period of time. Such a record would not qualify as catalog or market pricing, but it would provide a good record of the firm’s commercial pricing practices.

6.1.2 Commercial Prices (cont)

Pricing and Cost or Pricing Data Exception

The sources of commercial pricing information outlined above parallel the pricing information required for an exception to requirements for cost or pricing data.

Remember that making a decision to grant an exception from cost or pricing data requirements is not the same as the determination of price reasonableness.

In granting an exception from cost or pricing data requirements, you are determining that you have enough information to make a decision on price reasonableness without cost or pricing data. You can still use the information that you have collected to negotiate a lower price when the circumstances of the Government acquisition are different than the circumstances in the commercial market place. For example, the offeror may provide services to commercial customers that are not required by the Government. Since the Government is receiving less, you should expect to pay less.

6.1.3 Historical Prices

Definition

Historical prices are prior prices paid by the Government for the same or similar end items. Historical prices include prices paid by buyers in other contracting activities—including buyers in non Federal entities.

Using Historical Prices

Whenever you consider using historical prices to analyze price reasonableness, ask the following questions:

- *Has the product been purchased before?*

  The purchase may have been made by your office or by another purchasing office.

- *What was the historical price?*

  You can obtain price information from purchase files, computer data files, or manual inventory item records.

- *Was the historical price fair and reasonable?*

  For a historical price to be useful in determining the reasonableness of an offered price, you must know that the historical price was fair and reasonable. Be careful! It is not uncommon to review an item purchase history and find that no base other than the last price paid has been used for years to determine price reasonableness. In one study, the entire pricing histories for several items were reviewed and analysts found that for every acquisition except the first, the determination of price reasonableness was based on the last price paid. Analysts also found that the first acquisition was a multiple-item acquisition and while there was an analysis of the reasonableness of the overall acquisition price, no one ever examined the reasonableness of individual item prices. In other words, for years contracting officers found prices reasonable based on an arbitrary decision made during the first acquisition.

6.1.4 Pricing Yardsticks

Definition

FAR 15.805-2(c)

Pricing yardsticks are also known as Cost Estimating Relationships (CER). By either name, they are formulas for estimating prices based on the relationship of past prices with one or more product physical or performance characteristics (e.g., dollars per pound or dollars per horsepower) . Whenever you can relate item price with value of one or more physical or performance characteristics, you can use the relationship to estimate the price of a similar product. For example, builders commonly estimate the price of a planned building by multiplying the number of square feet in the building by a fixed cost per square foot.

Using Pricing Yardsticks

Whenever you consider using a pricing yardstick to determine price reasonableness, ask the following questions:

- *Has the yardstick been widely accepted in the market place?*

  Determine whether both buyers and sellers agree on the validity of a particular yardstick and the reasonableness of values used in estimating. Sellers may use a yardstick that produces an estimate higher than that normally accepted by buyers.

- *Has the yardstick been properly developed?*

  The user of the yardstick has the burden of demonstrating that the yardstick produces reasonable estimates. The user should be able to demonstrate the data and calculations used to develop the yardstick.

- *How accurate is the yardstick?*

  Validate the using known product data and prices. Examine the accuracy of the results. Remember that even a properly developed pricing yardstick will not always predict price exactly. Some yardsticks are very accurate others will only give you a rough approximation of the proper price. As yardstick accuracy decreases, the weight that you place on the yardstick in your pricing decision should also decrease.

6.1.5 Independent Government Estimates

Definition

As the name implies, an Independent Government Estimate is an estimate made by the Government. This section will define and consider three types of Independent Government Estimate.

- The most common is the Independent Government Estimate that accompanies the **purchase request.**
- A **value analysis estimate** results from a specialized analysis of the function of a product and its related price. It may literally involve taking the item apart to determine how it is made and why it costs what it does.
- A **visual analysis estimate** results from a visual inspection of an item, or drawing of an item, to estimate its probable value.

General Guidelines on Using Independent Government Estimates

Earlier in this text, you learned five questions to ask when analyzing the reliability and validity of Government purchase request estimates. Ask the same questions of any Independent Government Estimate before using it as a basis for comparison with offered prices.

- *How Was the Estimate Made?*
- *What Assumptions Were Made?*
- *What Information and Tools Were Used?*
- *Where Was the Information Obtained?*
- *How Did Previous Estimates Compare with Prices Paid?*

Special Consider-ations for Using Value Analysis

Value analysis provides information on product value in comparison with possible substitutes. It is particularly useful when:

- The Independent Government Estimate is the only price analysis base available or
- The product does not seem to be worth the price quoted.

6.1.5 Independent Government Estimates (cont)

Special Consider-ations for Using Value Analysis (cont)

To be effective, value analysis must be performed by individuals familiar with the product and its use by the Government and should follow a 5-step process:

1. Determine what the product must do.
2. Determine what total costs are related to purchasing the current product.
3. Identify other ways in which the function can be performed.
4. Document the total costs related to purchasing the alternative product.
5. Document the reasonableness of the current product or methods, or recommend appropriate changes.

The key part of the analysis is Step 3, the identification of . The following are examples of questions you should consider:

- *Can any part of the product be eliminated?*
- *Can a standard part replace a special part?*
- *Can a lower cost material or method be used?*
- *Can paperwork requirements be reduced?*
- *Can the product be packaged more economically?*

For Example: Suppose you are purchasing a pair of shoes. Shoes are used to walk in, to protect the feet, to keep the feet warm, and to enhance appearance. If shoes are to be attractive, they must be made of certain types and quality of material. If appearance is not important to the Government, a less attractive, less expensive, but possibly more durable material can be used. By changing the quality of material required, price will change. The ability of the product to perform the other functions of a shoe may also change.
You may apply the techniques of value analysis to any product, regardless of its complexity. However, generally consider only those products offering potential cost reductions that merit the time and cost of the analysis required.

6.1.5 Independent Government Estimates (cont)

Special Consider-ations for Using Value Analysis (cont)

Documentation is a key element in using value analysis to support a decision on price reasonableness. Assure that the process and results of the value analysis are clearly documented and include a copy of the documentation in the contract file. When you are satisfied that the value received supports the offered price, use that information to support your determination of price reasonableness. When you are not satisfied, use the information to document efforts to bring price in line with perceived value.

Special Consider-ations for Using Visual Analysis

In visual analysis, the analyst examines obvious external features of the product to determine value and related price. This technique is nothing more than technical experts comparing the product with other products by sight.

As a pricing tool, use visual analysis:

- In place of value analysis for products that do not offer potential cost reductions that merit the time and cost of analysis required for detailed value analysis.
- To review large numbers of products to identify any that appear to offer potential cost reductions that merit the time and cost associated with detailed value analysis.

6.2 Identifying Factors That Affect Comparability

Introduction

When comparing prices, you must attempt to account for any factors that affect comparability. The following factors deserve special consideration because they affect many price analysis comparisons:

- Market Conditions
- Quantity or size
- Geographic location
- Purchasing power of the dollar
- Extent of competition
- Technology
- Government unique requirements

Market Conditions

Market conditions change. The passage of time usually is accompanied by changes in supply, demand, technology, product designs, pricing strategies, laws and regulations that affect supplier costs, and other such factors. An effort to equate two prices, separated by five years, through a simple inflation adjustment may not be successful. Too many characteristics of the market are likely to have changed. Do not stretch data beyond their limits.

Generally select the most recent prices available. The greater the time difference, the greater the likelihood and impact of differences in market conditions. If you are comparing a current offer with a prior price, the ideal comparison would be with a contract price agreed to yesterday. That comparison would limit the effects of time on market conditions.

However, do not select a price for comparison merely because it is the most recent. **Look instead for prices that were established under similar market conditions.** For instance, if you are buying potatoes in October, offers from the previous October may be more comparable to current offers than prices paid last February, given the cyclical pattern of supply and demand in the market for potatoes.

Consider the most current available data on trends and patterns in market conditions. Remember that lags often occur between data collection and contract award. Changes in market conditions over that period can reduce the usefulness of the data assembled.

6.2 Identifying Factors That Affect Comparability (cont)

Quantity or Size

Variations in quantity can have a significant impact on unit price. A change in quantity can have an upward effect, a downward effect, or no effect at all.

In **supply and equipment** acquisitions, we usually assume that larger supply acquisitions command lower unit prices. Where economies of scale are involved, that should be the case. However, economies of scale do not always apply.

- Increases in order size beyond a certain point may tax a supplier's capacity and result in higher prices.
- Market forces may impose opportunity costs on a supplier which result in higher unit costs for greater volumes. For example, if the price of oil is expected to increase 20 percent over a 12-month period, a supplier may choose to withhold a portion for a sale at a later date when the price is higher. In such a market, the effect of purchase quantity on price may not be as expected; at some point, increases in volume will result in higher unit prices as the supply of the lower priced oil is exhausted.
- Finally, if a price comparison is based on standard commercial items that are produced at a regular rate, variations in quantity may have no effect at all.

A meaningful comparison of prices requires that the effect of volume on price be accounted for. The best way to do this is to select prices for comparison based on equal volumes. If that is not possible, examine the specific suppliers and the nature of the market at the time of the purchase.

6.2 Identifying Factors That Affect Comparability (cont)

Quantity or Size (cont)

In **service acquisitions**, the problems are different. Variations in size can sometimes be neutralized by reducing the comparison to price per square foot or price per productive labor hour. Because these approaches are not always effective, try to factor out size or quantity variations as much as possible. If you don't succeed, the price comparison will have little value.

Geographic Location

Geography can have a range of effects on comparability. In major metropolitan centers, you generally will be able to rely on data from within that geographic region; in more remote, less urban areas, you must often get data from beyond the immediate area. Prices for many nationally advertised products will not vary much from place to place. Nevertheless, because geographic location can undermine comparability, you should first try to evaluate offered prices against prices obtained from the same area.

When you must compare prices across geographic boundaries, take the following steps to enhance comparability:

1. Check the extent of competition, which can vary from place to place.
2. Determine the extent to which variations in the price of labor must be neutralized for valid comparison.
3. Check freight requirements and accompanying costs. These can vary considerably, especially for chemicals and other hazardous materials.
4. Identify geographic anomalies or trends. For example, many items are more expensive on the West Coast than in the East.

Purchasing Power of the Dollar

Inflation undermines comparability by eroding the real value of money. Because prices over time are expressed in the same currency (dollars and cents), the denominations must have comparable purchasing power if comparison is to be meaningful. You can normally use price index numbers to adjust for the changing value of the dollar over time.

6.2 Identifying Factors That Affect Comparability (cont)

Extent of Competition

When comparing one price with another, assess the competitive environment shaping the prices. For example, you can compare last year's competitive price with a current offer for the same item. However, if last year's procurement was made without competition, you may not have a good price with which to compare the current offer. A poorly written specification and an urgent need combined to make competition impossible last year, but now the specifications have been rewritten and the delivery is not urgent. Given these circumstances, a current offer could be the same as (or less than) last year’s best price and still not be reasonable.

Technology

Prices from dying industries can rise because the technologies don't keep pace with rising costs. Conversely, technological advances in growth industries can drive prices down. The computer industry is an example. Technological advances have been made so fast that a comparison of prices separated by a single year must account for these advances if the comparison is to have any value.

Engineering or design changes must also be taken into account. This means you must identify the new or modified features and estimate their effect on price.

Government Unique Requirements

Often, the Government's requirements vary to some degree from the commercial requirements for similar products. The question is the impact these variations have on price. For example, the Government may require that the carpet in a Navy ship be fireproof to a far greater extent than any commercial carpet. That may justify a difference in price as high as $60 a yard over otherwise comparable commercial carpets.

6.2 Identifying Factors That Affect Comparability (cont)

Government Unique Requirements (cont)

Similarly, you must often incorporate clauses in contracts that are not required in commercial market transactions. For example, contracts between buyers and sellers in the private sector do not include provisions relating to the Davis-Bacon Act, the Service Contract Act, clean air and water, and many other special conditions. Consequently, comparison of an offer with commercial prices may be difficult. Unique terms and conditions affect prices, but it is often extremely difficult to assign a dollar value to their effects.

Just as Government requirements may be different from commercial requirements, Government requirements at a specific time and place may be different than requirements at another time and place. These differences will also affect price comparisons.

6.3 Determining the Effect of Identified Factors

Introduction

Once you have identified the factors that may affect comparability, you must determine the effect on each specific comparison with the offered price. As you determine the effect of various factors on price comparisons, you must ask yourself the following questions:

- What factors affect this specific comparison?
- How do these factors affect the comparison?
- Does this comparison, even with its limitations, contribute to the price analysis?

Competitive Prices

In sealed bidding, all bids are priced against the contract requirements. Comparison with competitive prices is a straight forward comparison that normally requires no adjustments unless the evaluation process involves the use of price-related factors.

Comparing proposals may not be as simple as comparing bids, when:

FAR 15.606(c)

- The offer in line for award departs from the stated solicitation requirements. In that case, provide all offerors an opportunity to submit new or amended proposals against the revised requirements, provided this can be done without revealing the solution proposed by the original departure or any other information entitled to protection.
- Offers differ in their basic approaches to meeting performance or functional requirements. Remember, the price of a ceramic mug is little help in determining if the price of a paper cup is reasonable, even though both can satisfy a requirement for a container that will hold eight ounces of coffee.
- Technical proposals in “greatest value” competitions differ in promised capabilities and performance. In such competitions, you must analyze the reasonableness of the proposed price differentials for different technical configurations.

6.3 Determining the Effect of Identified Factors (cont)

Commercial Prices

Any of the general factors identified earlier in this chapter could affect the comparability of commercial prices (i.e., market conditions may have changed since the effective date of published prices; the purchasing power of the dollar may have changed; the published prices may have been based on different terms and conditions than solicited by the Government).

FAR 52.215-41
FAR 52.215-42

During your analysis, you should give special consideration to asking how the following have affected price analysis comparisons:

- Is there a difference between the services provided commercial and Government customers? Are published prices retail, wholesale, or distributor prices?
- Is there a difference between the catalog (or suggested price) and the price paid by commercial customers with requirements similar to the Government's requirements?
- Are there different prices for different customer classes (e.g., are there different prices for different classes of customers—public vs. brokers vs. retailers?)
- What special rebates or discounts are offered commercial customers?
- What is the value of extras provided commercial customers for promotional purposes (e.g., free packaging, free transportation, free insurance, etc.) without extra charge?

Historical Prices

Consider all general factors identified earlier in the chapter. At minimum, ask the following:

- *How have the specific changes in the contracting situation affected contract price?*

  You need to understand the acquisition situation as it existed in the previous situation and how the current acquisition situation differs. Important data elements include:

  ◊ Sources

  ◊ Quantities

  ◊ Production/Delivery Rates

  ◊ Start-up Costs

  ◊ Terms of Purchase

6.3 Determining the Effect of Identified Factors (cont)

Historical Prices (cont)

- *How have changes in the general economic situation affected contract price?*

  Economic changes are reflected in the general level of inflation or deflation related to the product that you are acquiring. Have prices gone up or down, and by how much?

Pricing Yardsticks

Consider all general factors identified earlier in the chapter. In particular consider the questions above that apply to historical prices. After all pricing yardsticks are based on historical pricing information.

In addition, you must ask if the historical relationship remains valid. As a minimum, consider the following questions:

- How have changes in market conditions affected the estimating relationship?
- How have changes in technology affected the estimating relationship?
- How have changes in production efficiency affected the estimating relationship?
- How have changes in the purchasing power of the dollar affected the estimating relationship?

Independent Government Estimates

Consider all general factors identified earlier in the chapter for possible effects on comparability.

Independent Government Estimates, especially those developed previously for such purposes as preparing budgets, may no longer be valid. Budget optimism or pessimism can have a significant effect on budget estimates. In addition, many estimates are developed years before the actual contract action is initiated.

6.4 Adjusting the Prices Selected for Comparison

Introduction

If you have a price analysis comparison base that does not require adjustment, use it! If you must make an adjustment, try to make the adjustment as objectively as possible. You may need to use statistical techniques or algebraic formulas to establish a common basis for comparison.

You must complete two basic tasks in order to establish comparability:

1. Identify and document price-related differences, taking into account the factors affecting comparability.
2. Factor out price-related differences.

Restoring comparability by establishing a common basis for comparison requires that you assign a dollar value to each identified difference. However, you cannot always do this. The cost of terms and conditions peculiar to Government contracts is hard to estimate, so exercise discretion in such cases.

Competitive Prices

Apply any price-related factors established in the solicitation, to adjust the offered prices for comparison with one another.

Other Prices

The challenge is to use the available information and to estimate the price that the Government should pay.

Use available information to estimate the effect of each factor on contract price. In this effort use appropriate quantitative analysis techniques.

If you cannot objectively adjust the prices for the factor involved, you may need to make a subjective adjustment. For example, estimating the effect on price of unique Government terms and conditions.

Every acquisition situation will be different. Whatever method you use, always document the information that you used and how you used it in making the adjustment.

6.5 Comparing Adjusted Prices

Introduction

After adjusting prices for comparison, determine the weight to give each price comparison. Then establish a should-pay price.

If the should-pay price departs significantly from the apparent successful offer, analyze the differences. You will then be ready to make the price-related decisions required to determine the successful offeror and make contract award.

Competitive Prices

Comparing competitive offers is normally the easiest form of price analysis. It also tends to be the most valid form of price analysis, because you are comparing offers prepared for the same requirement under the same market conditions. However, the weight placed on this type of comparison depends on the circumstances of the acquisition. Place less weight on competitive prices (relative to other price comparisons) when:

- Adequate price competition does not exist (regardless of the number of offers) — in which case the weight should be zero.
- Relatively few of the responsible firms in the industry submitted responsive offers (especially if the conditions of the solicitation unreasonably denied such firms a chance to compete).
- The apparent offeror appears to enjoy an unfair competitive advantage.
- Having used a performance or functional specification, the apparent successful offeror's proposed approach is less comparable to other proposed approaches than (a) to work performed under prior contracts or (b) commercial contracts.
- In a “greatest value” competition, the deliverable in line for award is less comparable to other offered deliverables than to (a) those acquired under prior contracts or to (b) commercial contracts.
- The apparent successful offer is significantly out of line with other offers.

6.5 Comparing Adjusted Prices (cont)

Competitive Prices (cont)

- The apparent successful offer is significantly out of line (either lower or higher) with estimates of the should-pay price from other types of comparisons (to the extent that other comparisons are reliable and valid indicators of the should-pay price).
- The cost of the acquisition is substantial. The larger the dollar value of the contract, the more importance you should place on sizable differences in dollars between different types of comparisons (even if the differences are modest when expressed as percentages).

Commercial Prices

Ask the following questions to determine the weight that should be placed on comparisons with commercial prices.

- *Can the offeror explain any differences between the offered price and its own commercial prices?*

  The offeror must be able to explain any differences between the offered price and commercial prices. You may base prices for a family of products on a single base product.

  For example: A radio transceiver may require different connectors and adapters to work with different systems. The part number may even be different for each system, but the basic component is the same. If the offeror can support the price of the various related products by using the price of the basic component, plus the cost of the additional devices, you can use that data to price the entire family of products.

6.5 Comparing Adjusted Prices (cont)

Commercial Prices (cont)

- *Is your purchase situation different from the typical commercial market situation?*

  Even when you grant an exemption from the submission of Certified Cost or Pricing Data based on a catalog price, market price, regulated price, or other commercial pricing, you do not have to accept the commercial price as the contract price. If you feel that the circumstances of your purchase are different, you should attempt to negotiate a different price.

- *Do other price analysis bases confirm that the offered price is reasonable?*

  If other bases indicate that the offered price is fair and reasonable, use that information in preparing your price negotiation objectives.

Historical Prices

Ask the following questions to determine the weight that should be placed on comparisons with historical prices.

- *How does the offered price compare with the historical price, considering changes in the contracting situation?*

  You may be able to use quantitative techniques to adjust prices for changes in the contracting situation. If you cannot, you must subjectively analyze the changes.

- *Do other types of price comparisons confirm that the offered price is reasonable?*

  Because of the changes in the purchasing situation, historical prices typically do not provide a precise base for determining price reasonableness. If possible, use other bases of price analysis to confirm that the offered price is fair and reasonable.

6.5 Comparing Adjusted Prices (cont)

Pricing Yardsticks

Ask the following questions to determine the weight that should be placed on comparisons with should-pay prices that are estimated by application of a pricing yardstick.

- *How does the offered price compare with the price developed using the pricing relationship?*

  Use the appropriate price analysis technique to estimate what the price should be. Compare the offered price with the estimated price, and carefully document the techniques and the judgment you use in your analysis.

- *Do other types of price comparisons confirm that the offered price is reasonable?*

  Because of item differences, pricing relationships typically cannot precisely confirm or refute price reasonableness. If possible, use other price comparisons to confirm that the offered price is fair and reasonable.

Independent Government Estimates

Remember that your reliance on Independent Government Estimates should always be tempered by your answers to the following questions:

- *How Was the Estimate Made?*
- *What Assumptions Were Made?*
- *What Information and Tools Were Used?*
- *Where Was the Information Obtained?*
- *How Did Previous Estimates Compare with Prices Paid?*

Place no weight on an Independent Government Estimate that originated with a contractor or is a sheer guess. If the Independent Government Estimate turns out to be a past contract price, analyze that price as you would any historical price.

On the other hand, you might place great confidence in Independent Government Estimates built through value analysis — depending on how well that analysis was done.

Chapter Vignette (cont)

Widget Acquisition (cont)

Your activities began with a purchase request and a purchase request price estimate.

Step 1: Select Prices for Comparison.
After reviewing all offers, you have four bases for Widget price analysis:

- *Historical prices -- Six months ago, $5,000 each for 40 units; one year ago, $5,300 each for 30 units; and 14 months ago, $5,500 each for 25 units.*
- *Purchase request estimate -- $5,000*
- *Catalog prices -- Widget Works' (the apparent successful offeror's) catalog price for 100 to 200 units is $4,850.*
- *Competitive offers -- Widget Works, $950,600; Moore Widgets, $978,000; Acme Products, $884,000; and Poteet Widgets, $890,000.*

Step 2: Identify Factors that Affect Comparability.
As you look at the various possible bases for price analysis you determine that some factors will require the use of specific bases for price analysis.

- *Historical prices -- the most comparable price appears to be $5,000 each for 40 units six months ago. The two major concerns here are general price changes (inflation or deflation) and different quantities (40 to 196).*
- *Purchase request estimate -- the original estimate was based on the last price paid ($5,000) so the factors that affect the historical price will also affect this purchase request estimate.*
- *Catalog prices -- no adjustment factors appear to apply because the widget required by the Government is identical to the widgets sold commercially.*
- *Competitive offers -- Widget Works' price was not the low offer. Their offer was low when quality-related costs were considered based on membership on the Blue Ribbon Contractor List (BRCL).*

(Continued next page)

Chapter Vignette (cont)

Widget Acquisition (cont)

Step 5: Compare Adjusted Prices to the Offer in Line for Award.
The unit price offered by the apparent successful offeror appears reasonable based on all comparisons.

- *Historical price -- offered price ($4,850) is lowered than the adjusted historical price ($4,882.50).*
- *Purchase request estimate -- offered price ($4,850) is lowered than the adjusted purchase request estimate ($4,882.50).*
- *Catalog price -- offered price ($4,850) is equal to the catalog price.*
- *Competitive offers -- while the apparent successful offer is not the lowest price offered, it is the lowest price when price related factors are considered.*

Summary of Analysis

The price offered by Widget Works appears reasonable based on a comparison with all the potential bases of price analysis. Based on those comparisons, the offered price should be determined to be fair and reasonable.

Account For Differences **CHAPTER 7**

Chapter Vignette

Widget Acquisition (cont)

Now you have several price comparisons to consider in your analysis of offered widget prices.

- *Competitive prices — The apparent successful offeror was selected from four responsive, responsible firms. The firm's unit price, $4,850, was the lowest evaluated price, after consideration of quality-related costs.*
- *Catalog prices — The apparent successful offeror's catalog price is $4,850 per unit.*
- *Historical prices — The historical price for smaller quantities was $4,850. Adjusted for the changing value of the dollar, that price today would be $5,250 per unit for 40 units.*
- *Government estimate — The Government estimate was based on the last price paid, $5,000. Again, the last price paid adjusted to current dollars would be $5,250.*

Taken together, these comparisons support the overall reasonableness of the offer in line for award.

What if the comparisons did not support the price reasonableness of the current offers? What if they indicated that the price was 30 percent too high? Should you accept the price anyway? Should you automatically reject all offers?

Before you take any action, you should attempt to determine the reasons for any differences. This chapter will present some of the most common reasons that you should consider.

Learning Objectives

At the End of This Chapter	At the end of this chapter you will be able to: **Classroom Learning Objective 7/1** Identify and account for any significant vendor-related differences between the offered price and the should-pay price. **Classroom Learning Objective 7/2** Identify and account for any significant market-related differences between the offered price and the should-pay price.

7.0 Introduction

In This Chapter

In this chapter, you will learn how to account for significant differences between the apparent successful offer and your should-pay price.

SECTION	DESCRIPTION	SEE PAGE
7.0	Introduction	7-3
7.1	Identifying Vendor-related Differences	7-8
	7.1.1 Responsibility	7-9
	7.1.2 Understanding of Requirements	7-10
	7.1.3 Technology	7-12
	7.1.4 Efficiency	7-14
	7.1.5 Strategy	7-1
	7.1.6 Mistakes	7-16
7.2	Identifying Market-related Differences	7-17
	7.2.1 General Market Conditions	7-18
	7.2.2 Contract Requirements	7-21

Chapter Introduction (cont)

Procedural Steps

The following figure shows where this chapter fits into the conduct of a price analysis.

7.0 Introduction (cont)

Price Comparison Process

The process for making price comparisons in price analysis involves five steps:

1. Select prices for comparison:
   - Competitive prices
   - Commercial prices
   - Historical prices
   - Price estimates based on pricing yardsticks
   - Independent Government Estimates
2. Identify factors that affect comparability.
3. Determine the potential impact of these factors on prices selected for comparison.
4. Adjust prices selected for comparison.
5. Compare adjusted prices to the offer in line for award.

Even after you complete these steps, your should-pay price will typically not be identical to the offered price. In most cases, the differences will not be significant, and the offered price will fall within a range of reasonable prices. But what happens when there is a significant difference between the offer and your should-pay price?

7.0 Introduction (cont)

Apply More Than One Comparison Base

To limit the effect of differences between offers and should-pay prices, use more than one of the available comparison bases in your price analysis whenever possible. Do this even when price competition appears adequate. Remember, competitive prices are not always fair and reasonable.

When you make more than one type of price comparison, you will establish a range of prices that you could consider fair and reasonable. The apparent successful offer may not be the same as any one estimate, but you could consider the offered price fair and reasonable if it falls within the range.

> **For example:** The Government estimate for a particular item is $80,000. Analysis based on historical prices indicates that the price should be $75,500. The apparent successful offer is $76,500 and four other offerors range from $77,000 to $89,000.

In this example, the price falls within the range of prices that appear reasonable. You have several estimates and most are close to the apparent successful offer. Funds are available for contract award. In this situation, there is little need to account for differences between the various should-pay prices and the apparent successful offeror.

7.0 Introduction (cont)

When To Account For Differences

You should attempt to account for differences between the apparent successful offer and your should-pay price estimate(s) when:

- The apparent successful offer is substantially below all other competitive offers.
- The apparent successful offer is substantially below your best should-pay price estimate.
- The apparent successful offer is substantially higher than your best should-pay price estimate.

When you have identified the reasons for the differences, you can use your analysis to make related contracting decisions. You might determine that:

- The low offer is unreasonable, **or**
- The low offer is reasonable notwithstanding the differences, **or**
- The differences result from problems with the solicitation or other mistakes on the part of the Government that need to be corrected through such methods as canceling and resoliciting.

You should attempt to account for differences between offers and your estimates when:

- The low offer is substantially below all other competitive offers.
- The low offer is substantially below your best estimate of a should-pay price.
- The low offer is substantially higher than your best estimate of a should-pay price.

Such discrepancies do not necessarily mean that the low offer is unreasonable. Depending on the reasons for the discrepancy, you might determine:

- That the low offer is unreasonable, **or**
- That the low offer is reasonable notwithstanding the discrepancies, **or**
- That the discrepancies result from problems with the solicitation or other mistakes on the part of the Government that need to be corrected through such methods as canceling and resoliciting.

7.1 Identifying Vendor-related Differences

Overview

In this Section

In this section, you will learn the most common vendor-related reasons for differences between the low offer, other offers, and various estimates of reasonable prices.

TOPIC	SEE PAGE
7.1.1 Responsibility	7-9
7.1.2 Understanding of the Requirement	7-10
7.1.3 Technology	7-12
7.1.4 Efficiency	7-14
7.1.5 Strategy	7-15
7.1.6 Mistakes	7-16

Vendor-related Differences

Vendor differences are circumstances that result primarily from the action or inaction of an individual firm. Buyers often look at a source list as a homogenous group of firm. However, individual firms have personalities, just like people do, with different needs and wants. These differences manifest themselves in the prices offered, as well as in the way each firm will perform any contract awarded.

7.1.1 Responsibility

Price Analysis and Responsibility

FAR 15.608(a)(1)

The FAR requires you to use cost or price analysis “to evaluate the cost estimate or price, not only to determine whether it is reasonable, but also to determine the offeror's ability to perform the contract.”

There may be a direct connection between the apparent successful offer and the firm's ability to perform. The firm's price may be very attractive because the firm does not understand the contract requirements, or because it does not have the required investment in technology and equipment to perform the contract.

FAR 9.103(c)

Always remember that a contractor who cannot perform is never a good deal at <u>any</u> price. In the words of the FAR:

> “The award of a contract to a supplier based on lowest evaluated price alone can be false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs. While it is important that Government purchases be made at the lowest price, this does not require an award to a supplier solely because that supplier submits the lowest offer. A prospective contractor must affirmatively demonstrate its responsibility….”

Hence, if the low offer is significantly lower than other offers or your estimate of the should-pay price, the burden is on the offeror to affirm its ability to perform at that price. In sealed bidding, a “mistake in bid” procedure has been established in part to provide you with an opportunity to verify that a bidder can perform at a price that is greatly out of line with other bids. In negotiated procurements, you can directly ask the offeror to affirm its ability to perform at the proposed price during discussions.

Effect on Contract Pricing

You cannot make a determination of price reasonableness based on a price comparison with an offer that is technically unacceptable or an offer submitted a firm that is not responsible. If only one offeror is responsible and no other exception applies, you must require the responsible offeror to submit cost or pricing data. Even if another exception does apply, you may need to require information other than cost or pricing data to determine price reasonableness.

7.1.2 Understanding the Requirements

Introduction FAR 15.608(a)(1)	The price offered by a firm represents the firm's **understanding of the contract requirements**. Even with a responsible firm and well-defined contract requirements, misunderstandings and varying interpretations are possible. FAR requires you to use price analysis "to evaluate the cost estimate or price, not only to determine whether it is reasonable, but also to determine the offeror's understanding of the work and ability to perform the contract."
Misunderstandings	Misunderstandings are particularly likely when the solicitation contains unusual requirements that are different from what the offerors typically see in solicitations for similar requirements. The unusual requirement could be the inclusion of unique requirements or a change in requirements since the last similar contract. For example, there could be a change from a Federal Specification to a commercial purchase description for an item. Some firms may not recognize the change and continue to price based on the superseded Federal Specification. Others will recognize the change and price based on the actual solicitation requirements.
Varying Interpretations	Varying interpretations are particularly likely to occur in situations where performance requirements are used. For example, remember the "8-ounce coffee container" requirement. One offeror could interpret the requirement to mean "provide an 8-ounce ceramic mug." Another could interpret it to mean "provide an 8-ounce paper cup."

7.1.2 Understanding the Requirements

Effect on Contract Pricing

The effect of either misunderstandings or varying interpretations of specification requirements may be wide differences in prices. Not only will prices be different from each other, they may also be different from the comparison bases used for price analysis.

Misunderstandings. A firm that does not understand that the solicitation requirements have changed will offer a price based on its expectations about the contract requirements. In the example above, a firm that continued to price based on the Federal Specification will likely offer a higher price than a firm that did identify the change to a commercial specifications.

Varying Interpretations. A firm that devises a more costly solution to meet the requirements of a performance specification will offer a higher price than a firm who devised a simpler solution. In the example above, the paper cup will be substantially cheaper than the ceramic mug. However, the reasonableness of the price of the paper cup cannot be based on a competitive price comparison with the price of a ceramic mug. Comparisons with other bases for price analysis may also be complicated by similar differences in interpretation of the specification.

7.1.3 Technology

Introduction

Pricing differences may involve technology in differences related to:

- The acquisition of new technology
- The type of technology currently available.

Effect of Special Technology Requirements

If an offeror must have a special product or production technology to meet Government requirements, there may be an effect on contract price. Some firms may have the required technology, while others may not.

Product Technology. If the product technology is within a firm's existing capabilities, it will not need to conduct expensive research and development or purchase the technology from other firms.

Production Technology. If a unique production technology, required for contract performance, is currently available to a firm, it will not need to invest in new plant and equipment to perform the contract. If the technology is not available, investment, or possibly expensive subcontracting, will be required. There may also be schedule delays during the period that the firm is acquiring the new technology. Dealing with the effects of schedule delays may further increase the cost of the contract.

Different Cost Patterns Associated With Different Technologies

Differences in the cost patterns associated with different production technologies can also affect contract price. Firms can produce the same product with different types of equipment and different related costs. One firm may use a labor-intensive method of production, and, as a result, have a low fixed cost of production. Another firm might have an automated facility with high fixed costs of production and high set-up costs. For small quantities, the labor intensive firm will have the lower cost per unit. For large quantities, the automated firm will have the lower cost per unit because the fixed costs of production are spread over more units.

7.1.3 Technology (cont**)**

Effect on Contract Pricing

Special Technology Requirements. If costs are increased by the need to acquire a special product or production technology, prices are likely to increase because of the increased costs. If the required investment in technology has application to other products produced by the firm, the costs may be shared. If the technology requirements are unique, the costs will have to be charged to a single product.

If only one firm has access to the necessary technology, that firm may have a lock on the competition. If that happens, prices may be held at an artificially high level and expected price reductions from continuing production may not occur.

Different Technology Cost Patterns. Differences in production technology may produce prices that are substantially different from what would be expected from analysis of historical prices for substantially different quantities. For smaller quantities, the labor intensive firms may have a competitive advantage. For larger quantities, the automated firm may have a competitive advantage.

7.1.4 Efficiency

Introduction	Firms with exactly the same equipment and technology can have substantially different cost structures, even when they are producing exactly the same products.
Efficiency Differences	The differences in cost structures result from operating at different levels of efficiency. Measures of efficiency examine the input, labor, materials, and equipment, required to obtain a given level of output. When compared with less efficient firms, more efficient firms can produce the same amount of product with less input, or more output with the same amount of input. The difference lies mainly in the organization and operation of the firm's management. Concepts like total quality management have been developed to identify areas of operation that do not add value. The objective is to eliminate non-value-added effort and increase efficiency.
Effect on Contract Pricing	As stated above, efficiency is a comparison of input and output. When you examine a firm's efficiency in producing a product, the comparison is normally made in terms of dollars per unit of output. More efficient firms can produce a product at a lower cost than less efficient competitors. A firm that is substantially more efficient than its competitors can produce a unit of a product at a substantially lower cost. If the firm can produce at a substantially lower cost, it can sell for less and still make a greater profit than its competitors.

7.1.5 Strategy

Introduction

All firms have the same general pricing objectives:

- To cover costs
- To contribute to attaining corporate operational objectives.

However, different firms have different pricing strategies. And pricing strategies within a single firm can change with changes in the product and the market situation.

Strategies

Some offerors pursue **cost-based pricing strategies** and others pursue **market-based pricing strategies**. A single firm may follow different pricing strategies in different acquisition situations. Three cost-based and seven market-based pricing strategies are described in detail in the text Introduction.

Effect on Contract Pricing

Firms pursuing different pricing strategies may offer different prices, even when they have essentially the same production costs. As a result, you should consider differences between these strategies as you analyze price differences.

Comp Gen B-238877, April 5, 1990

Be particularly careful if you believe that the apparent successful offeror's pricing strategy involves pricing the contract below cost. The Comptroller General has repeatedly dismissed protests against alleged below-cost, "buy-in" offers. In one case, the Comptroller General noted that a "bidder, for various reasons, in its business judgment may decide to submit a below-cost bid; such a bid is not invalid. … Whether the awardee can perform the contract at the price offered is a matter of responsibility."

Comp Gen B-238259, May 4, 1990

Hence, when confronted with what appears to be a "buy-in" price, your challenge is to determine whether the price represents an unacceptable performance risk "—i.e., to judge the degree of risk by calculating the extent to which the proposed price falls short of the amount the agency believes is required to perform as proposed."

7.1.6 Mistakes

Introduction	Like individuals, businesses, even major corporations, are not perfect, and can make mistakes.
Types of Mistakes	You have already considered one form of mistake as part of your consideration of offeror understanding of the Government requirement. In pricing, you may also see mistakes that involve simple mathematical errors. The more complex the task, the more opportunity there is for error. Mathematical mistakes still occur, even when prices are prepared by computer. Computers only do what they are programmed to do. If the programming is incorrect, the answer will also be incorrect.
Effect on Contract Pricing	Even a simple mathematical error can have a significant effect on contract pricing. Pricing is usually the last step in offer development. In the pressure to submit the offer, the mistake may be missed by the offeror's review process. **For example:** A construction task requires remodeling of 20 identical buildings. The bidder estimates the price for one building and multiplies the price by 2 instead of 20. The bid price is one-tenth what the estimator meant it to be.

7.2 Identifying Market-related Differences

Overview

In this Section

In this section, you will learn the most common market-related reasons for differences between the low offer, other offers, and various estimates of reasonable prices.

TOPIC	**SEE PAGE**
7.2.1 General Market Conditions	7-18
7.2.2 Contract Requirements	7-21

Market-related Differences

Market-related differences are circumstances that are beyond the control of an individual firm and that affect all firms, but not always in the same way. Just like vendor differences, market difference can also affect price comparisons.

7.2.1 General Market Conditions

Introduction	A general market condition is any factor that affects the general industry conditions under which products are bought and sold.
Differences in General Market Conditions	Consider changes in the contracting situation and in general economic conditions, whenever you are using historical prices as a comparison base for determining price reasonableness. Three circumstances are worthy of special consideration: • Changes in the level of competition • Limited competition and collusion • Differing economic conditions
Changes in the Level of Competition	Changes in the level of competition can affect offeror pricing strategies. If competition decreases from historical levels, firms typically will be less concerned about the threat of price competition. If the level of competition increases, firms will be more concerned.
Limited Competition and Collusion	In Government contracting, you normally assume that you have adequate price competition whenever there are two or more offers. You must be careful in assuming competition, particularly in situations where there are only two or three firms that can meet Government requirements. Limited competition encourages collusion. Any agreement or mutual understanding among competing firms that restrains the natural market forces should be considered collusion. The understanding does not have to be the result of an active agreement. It can be a passive understanding that aggressive competition will lower profit margins for all competitors without increasing volume for any single competitor. As long as each firm gets its "fair share" of the business, all the firms can increase profit by not competing aggressively.

7.2.1 General Market Conditions (cont)

Limited Competition and Collusion (cont)

FAR 3.303 (c)

You may find that it is often difficult to detect collusion and antitrust law violations. Practices or events that may evidence violation of antitrust laws include:

- The existence of an "industry price list" or "price agreement" to which contractors refer when formulating offers.
- A sudden change from competitive bidding to identical bidding.
- Simultaneous price increases or follow-the-leader pricing.
- Rotation of offers or proposals, so that each competitor takes a turn in sequence as low offeror, or so that certain competitors submit low offers on some sizes of contracts and high on other sizes.
- Division of the market, so that certain competitors only offer low prices for contracts let by certain agencies, or for contracts in certain geographical areas, or on certain products, and offer high prices on all other contracts.
- Establishment by competitors of a collusive price estimating system.
- The filing of a joint bid by two or more competitors when at least one of the competitors has sufficient technical capability and productive capacity for contract performance.
- Any incidents suggesting direct collusion among competitors, such as the appearance of identical calculation or spelling errors in two or more competitive offers or the submission by one firm of offers for other firms.
- Assertions by the employees, former employees, or competitors of offerors, that an agreement to restrain trade exists.

Differing Economic Conditions

A firm can have a competitive advantage because of the economic conditions in the area in which it operates. Expect production costs to be different in different parts of the country. You may be able to use index numbers to consider the effect that different area costs will have on contract price.

7.2.1 General Market Conditions (cont)

Effect on Contract Pricing

Changes in the Level of Competition. Changes in the level of competition will affect the accuracy of price estimates based on historical prices. As firms become less concerned about competition, prices may be expected to increase faster than national averages. As firms become more concerned about competition, price increases may be slower than national averages.

FAR 3.303 (f)

Limited Competition and Collusion. Collusion, active or passive, will increase prices. Carefully review any of the practices or events that may indicate evidence of violation of the antitrust law. Some events such as certain competitors being low only for contracts let by certain agencies, or for contracts in certain geographical areas, or on certain products, and high on all other jobs, may have economic explanations other than collusion. If your review confirms collusion, you should report your conclusions to the U.S. Department of Justice.

Differing Economic Conditions. Differences in the area economic conditions can have a significant effect on production costs, including labor rates and material costs. Depressed economic conditions in an area can lower costs, such as those associated with high rates of local unemployment. Depressed sales can make suppliers more willing to cut prices to make a sale. Lower labor and material costs will permit a firm to produce a product more cheaply than its competitors operating in areas with better general economic conditions.

7.2.2 Contract Requirements

Introduction	The term contract requirements includes more than just product requirements documents. It includes any element of the solicitation or contract that defines what the contractor must do to complete the contract successfully. Changes in requirements and defective requirements can both affect price analysis comparisons.
Defective Requirements	The different elements of the solicitation are termed defective when they do not adequately describe contract requirements. A contract should define, **who, what, when, where, and how** for any task that must be performed under the contract. If the contract is not clear, or the requirements are open to interpretation, widely different interpretations may result. If contract terms conflict, the contract may be impossible to perform.
Changes in Contract Requirements	Changes in contract terms can be particularly important when you use historical prices as a comparison base to determine price reasonableness. Changes in type of contract, f.o.b. point, delivery requirements, quantities, and other terms can affect the contractor's cost and risk.
Effect on Contract Pricing	**Defective Requirements.** If requirements are unclear or conflict, firms may attempt to guess what the Government really wants. Some may underestimate, and others may overestimate actual requirements. The result may be a wide range of prices, depending on the interpretation of the individual offeror. Some firms may even attempt to "game" the offer by assuming the lowest requirement possible in the belief that a contract change will be required to correct the conflict. Remember, judges normally interpret disputes over contract ambiguities and conflicts against the writer of the contract, which is the Government. **Requirements Changes.** Any element that will affect contractor cost or risk will also affect contract price. Changes from historical contract terms that increase cost or risk should increase price. Changes from historical terms that decrease cost or risk should decrease contract price.

Chapter Vignette (cont)

Widget Acquisition (cont)

The chapter has presented some of the most common reasons for differences between offers and buyer-developed should- pay prices. They are not an end-all for analysis; they are a starting point.

Do not let analysis paralyze you and prevent you from making a decision. At the same time, unsupported differences of several thousand dollars, or large percentage differences from should-pay estimates, should not be accepted until you ***UNDERSTAND*** *why the differences exist.*

Price-Related Decisions In Sealed Bidding — CHAPTER 8

Chapter Vignette

Widget Acquisition (cont)

Now you have completed your price analysis. It is time to use your analysis in making pricing-related decisions. The decisions that you must make will depend in part on whether you are contracting using sealed bidding or negotiation.

If you are contracting using sealed bidding, you will normally award the contract to the responsive, responsible bidder with the lowest evaluated price. For example, if you were using sealed bidding procedures in your widget purchase, you would ***likely award*** *based on your price analysis.*

However, there are situations where the Government must reject a low bid or cancel an entire invitation for bids for pricing-related reasons. In this chapter, you will learn what you can do in these situations. For example:

- *What should you have done if your estimated should-pay price per widget was $7,000 and the low offer $4,850?*
- *What should you have done if your estimated Should-Pay price per widget was $2,500 and the low offer $4,850?*

Learning Objectives

At the End of This Chapter

At the end of this chapter you will be able to:

Classroom Learning Objective 8/1
Determine whether to reject a bid that is unreasonably low or materially unbalanced.

Classroom Learning Objective 8/2
Identify the price-related reasons for canceling an IFB.

8.0 Introduction

In this Chapter

In this chapter you will learn how to:

SECTION	DESCRIPTION	SEE PAGE
8.0	Introduction	8-3
8.1	Examine Individual Bids	8-5
	8.1.1 Suspected Mistakes in Bids	8-6
	8.1.2 Unbalanced Bids	8-13
8.2	Determine Need to Cancel the IFB	8-18
	8.2.1 Price-Related Reasons for Canceling the IFB	8-19
	8.2.2 Negotiation After Cancellation	8-25

Introduction

FAR 14.404-1
FAR 14.404-2

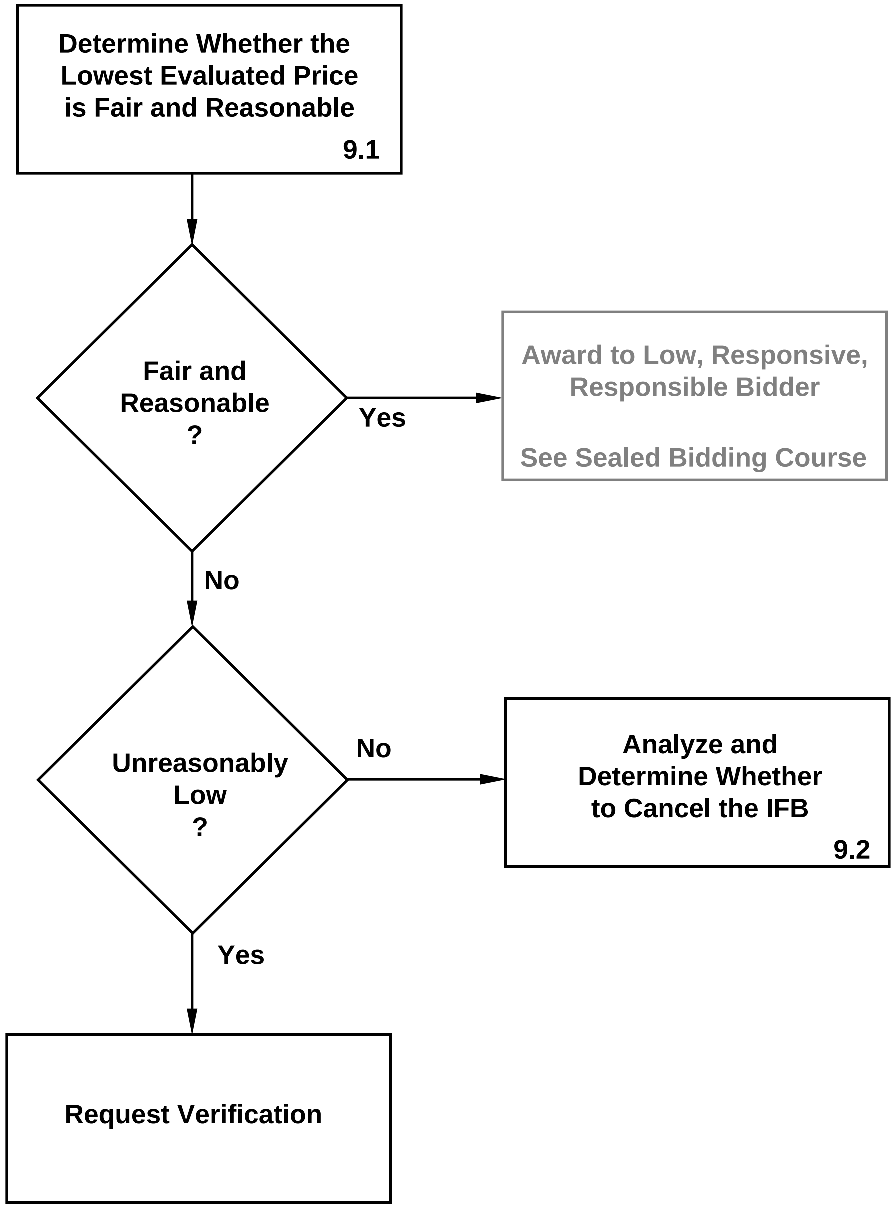
To maintain the integrity of sealed bidding as a method of procurement, you must award to that responsible bidder which submitted the lowest responsive bid, as determined by applying the IFB's price-related factors. However, this general rule does not hold if you have reason to believe that the low bid is:

- The result of a mistake by the bidder,
- Materially unbalanced, or
- Otherwise unreasonable as to price.

8.0 Introduction (cont)

Procedural Steps

The following figure shows the sequence of events or steps that you should follow to make price-related decisions in sealed bidding.



8.1 Examine Individual Bids

Overview

In this Section

This section covers the following topics:

TOPIC	SEE PAGE
8.1.1 Suspected Mistakes in Bids	8-6
8.1.2 Unbalanced Bids	8-13

8.1.1 Suspected Mistakes in Bids

Introduction

FAR 14.404-2(f)

What if the low bid is well below all other bids? What if the low bid is well below your estimate of the should-pay price? The FAR states that "any bid may be rejected if the contracting officer determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the bid, but the prices for individual line items as well." To determine whether an unexpectedly low bid is unreasonable, use the FAR "mistake in bid" procedure.

Examining Bids for Mistakes

FAR 14.407

After the bid opening, examine all bids for mistakes. Look for two kinds of mistakes:

- Apparent clerical errors, and
- Other indications of error — such as a bid price that is far out of line with other bids or with the dollar amount determined by the contracting officer to be reasonable.

If you suspect that the bidder has erred, request verification of the bid from the bidder. This is your opportunity to talk with (and even meet) the bidder to find out why the bid price is so low. The bidder may, at this point, admit to having made a mistake in preparing the bid. Or the bidder may stand by the bid price. In either case, the burden of proof is on the bidder.

Correcting Apparent Clerical Mistakes

FAR 14.407-2

When you examine bids, you may spot a clerical error apparent on the face of the bid. Examples of apparent clerical errors:

- Obvious misplacement of a decimal point.
- Obviously incorrect discounts (e.g., 1% 10 days, 2% 20 days, 5% 30 days).
- Obvious reversal of the price f.o.b. origin, and the price f.o.b. destination.

The contracting officer may correct, before award, any clerical error which is apparent on the face of the bid. Follow this 3-step process:

1. Ask the bidder to verify the intended bid.
2. Attach the bidder's verification to the original bid and a copy of the verification to the duplicate bid.
3. Reflect the corrected price in the award document.

8.1.1 Suspected Mistakes in Bids (cont)

Other Suspected or Alleged Mistakes

FAR 14.407-3(g)(1)

If you suspect that the bidder made a less obvious mistake, such as grossly underestimating the cost of doing the work, immediately ask the bidder to verify the bid. Your action must be sufficient to reasonably assure that the bid is correct or to elicit an admission of a mistake by the bidder.

To put a bidder on notice of the suspected mistake, advise the bidder, as appropriate:

- That its bid is so much lower than the other bids or the Government's estimate as to indicate the possibility of error.
- Of important or unusual characteristics associated with the Government requirements,
- Changes in the requirements from those of previous acquisitions, or
- Any other information, proper for disclosure, that leads you to suspect a mistake.

After you have raised the possibility of a mistake to the bidder, the bidder may take one of three courses of action:

- Allege that a mistake was made and request permission to correct the mistake.
- Allege that a mistake was made and request permission to withdraw the bid.
- Verify the original bid.

Clear and Convincing Evidence

FAR 14.407-3(g)(2)

If a bidder alleges that a mistake was made, the bidder must submit a written request to withdraw or modify the bid supported by statements (sworn, if possible) and by clear and convincing evidence of the mistake.

What constitutes clear and convincing evidence?

All pertinent evidence establishing the existence of the error, the manner in which it occurred, and the bid actually intended. Examples of such evidence include:

- The bidder's file copy of the bid.
- The original work sheets and other data used in preparing the bid.
- Subcontractors' quotations, if any.
- Published price lists.

8.1.1 Suspected Mistakes in Bids (cont)

Bid Verification Flow Chart

FAR 14.407-3

The flow chart below outlines the analysis of prices involved when a bidder requests permission to correct an alleged mistake in bid. The “situations” identified in this flow chart relate to the situations identified in the table that begins on the next page.

8.1.1 Suspected Mistakes in Bids (cont)

Bidder Requests Correction

FAR 14.407-3

The following table documents authorized Government courses of action, given the circumstances of the alleged mistake. Each agency will publish any delegation of agency head authority. For example, in the Department of Defense, delegation of agency head authority is defined in DFARS.

Bidder Requests Permission to Correct the Mistake		
Situation	**If**	**Then**
1 FAR 14.407-3(a)	You have clear and convincing evidence of a mistake **AND** You have clear and convincing evidence of the bid intended **AND** Lower bidders would NOT be displaced by the correction	Agency head, or delegated official, may permit the bidder to CORRECT the mistake.
2 FAR 14.407-3(a)	You have clear and convincing evidence of a mistake **AND** You have clear and convincing evidence of the bid intended **AND** Lower bidders WOULD BE DISPLACED by the correction **AND** Existence of the mistake and the bid intended ARE ASCERTAINABLE substantially from the invitation and the bid itself	Agency head, or delegated official, may permit the bidder to CORRECT the mistake.
3 FAR 14.407-3(a)	You have clear and convincing evidence of mistake **AND** You have clear and convincing evidence of the bid intended **AND** Lower bidders WOULD BE DISPLACED by the correction **BUT** Existence of the mistake and the bid intended are NOT ASCERTAINABLE substantially from the invitation and the bid itself	The bidder SHALL NOT BE PERMITTED TO CORRECT the mistake.

(Chart continued on next page)

8.1.1 Suspected Mistakes in Bids (cont)

Bidder Requests Correction (cont)

Continuation of the table documenting authorized Government courses of action, given the circumstances of the alleged mistake:

BIDDER REQUESTS PERMISSION TO CORRECT THE MISTAKE (continued)		
SITUATION	**IF**	**THEN**
4 FAR 14.407-3(c)	You have clear and convincing evidence of mistake **AND** There is NO clear and convincing evidence of the bid intended	An official above the contracting officer may permit the bidder to WITHDRAW the bid.
5 FAR 14.407-3(c)	The evidence reasonably supports the existence of the mistake but is NOT clear and convincing.	An official above the contracting officer may permit the bidder to WITHDRAW the bid.
6 FAR 14.407-3(d)	The evidence does NOT reasonably support the existence of a mistake **AND** The contracting officer has determined that the bid price is reasonable	Agency head, or delegated official, may determine that the bid can be NEITHER WITHDRAWN NOR CORRECTED.
7 FAR 14.407-3(g)	The evidence does NOT reasonably support the existence of a mistake **AND** The contracting officer has determined that the bid price is unreasonable	Contracting officer must reject the bid as unreasonable

8.1.1 Suspected Mistakes in Bids (cont)

Bid Verification Flow Chart

FAR 14.407-3

The flow chart below outlines the analysis of prices involved when a bidder requests permission to withdraw an alleged mistake in bid. The “situations” identified in this flow chart relate to the situations identified in the table that begins on the next page.

8.1.1 Suspected Mistakes in Bids (cont)

Bidder Requests Withdrawal

FAR 14.407-3

The table below documents authorized Government courses of action, given the listed circumstances of the alleged mistake. Each agency will publish any delegation of agency head authority. For example, in the Department of Defense, delegation of agency head authority is defined in DFARS.

BIDDER REQUESTS PERMISSION TO WITHDRAW THE BID

SITUATION	IF	THEN
1 FAR 14.407-3(b)	You have clear and convincing evidence of mistake **AND** You have clear and convincing evidence of the bid intended **AND** The bid, both as corrected and uncorrected, is the lowest received.	The agency head, or delegated official, may determine to CORRECT the bid and NOT PERMIT WITHDRAWAL.
2 FAR 14.407-3(c)	You have clear and convincing evidence of mistake **BUT** Evidence of the bid intended is NOT clear and convincing	An official above the contracting officer may permit the bidder to WITHDRAW the bid.
3 FAR 14.407-3(c)	The evidence reasonably supports the existence of the mistake but is NOT clear and convincing	An official above the contracting officer may permit the bidder to WITHDRAW the bid.
4 FAR 14.407-3(d)	The evidence does NOT reasonably support the existence of the mistake **AND** The contracting officer has determined that the bid price is reasonable	Agency head, or delegated official, may determine that the bid can be NEITHER WITHDRAWN NOR CORRECTED.

8.1.1 Suspected Mistakes in Bids (cont)

Bidder Verifies Bid as Submitted

The following table documents authorized Government courses of action:

BIDDER VERIFIES THE BID AS SUBMITTED	
SITUATION	**IF**
1	If the bidder verifies the original bid and denies that a mistake was made, you must accept or reject the bid as originally submitted.

Considering "Verified" Bids

FAR 14.407-3(g)(5)

If the bidder verifies the original bid or fails to furnish evidence to support an alleged mistake, you must consider the bid as originally submitted unless you are justified in concluding that accepting it would be “unfair to the bidder or to other bona fide bidders”. Such a conclusion is justified when either of the following is true:

- The dollar amount of the bid is far out of line with:
  - ◊ The dollar amounts of other bids received, or
  - ◊ The Government price estimate, or
  - ◊ The dollar amount determined by the contracting officer to be reasonable.
- There are other clear indications of error, such as contractor inability or unwillingness to:
  - ◊ Demonstrate a clear understanding of contract requirements.
  - ◊ Present original work sheets that support the reasonableness of the bid price.
  - ◊ Explain how the work can be completed at the bid price.

Attempts made to obtain the information required, and the action taken with respect to the suspect bid, must be fully documented.

8.1.1 Suspected Mistakes in Bids (cont)

Examples

The following are summaries of two Comptroller General decisions related to contracting officer decisions to reject offers as unfair to the bidder or to other authorized bidders.

Decision Summary 1. Pamfilis Painting, Inc.

Comp Gen B-237968, April 3, 1990

The contracting officer suspected a mistake in Pamfilis's bid because it was 44% below the government estimate. Three bid verification meetings were held with Pamfilis. During these meetings, agency officials reviewed the contract require-ments, specifications, government estimate, and bid submission with Pamfilis to en-sure that the firm's bid represented a clear understanding of the scope of work. It be-came apparent that Pamfilis did not understand the requirements of the IFB. As a result, Pamfilis had not priced several essential items of work required by the IFB, and the bid contained numerous errors based on Pamfilis's erroneous interpretation of the IFB. The contracting officer rejected Pamfilis's bid.

The Comp Gen concluded that "A contracting officer's decision to reject an apparently mistaken bid under … [FAR] 14.407-3(g)(5) is subject to question only where it is shown to be unreasonable. See TLC Financial Group, B-237384, Jan. 26, 1990, 90-1 CPD P 116; Veterans Administration- Advance Decision, B-225815.2, Oct. 15, 1987, 87-2 CPD P 362. **Moreover, an obviously erroneous bid may not be accepted even if it is verified by the bidder**." (emphasis added).

Comp Gen B-237384, Jan. 26, 1990

Decision Summary 2. TLC Financial Group.

TLC bid $500,000 for a line item. This bid was 68% below the Government es-timate and 64% below the second low bid. Government officials met with TLC officials, to verify whether TLC's bid was based on a full understanding of the scope of work and to review work sheets used by TLC to calculate its bid price.

Despite several requests, TLC did not submit its bid work sheets. However, based on information contained in TLC's bid and discussions at the meeting, the contracting officer determined that TLC had misinterpreted the scope of work required by the IFB, resulting in an unrealistically low bid.

The contracting officer concluded that TLC's bid was clearly a mistake and determined that award to TLC would be unreasonable and unfair to the other bidders under FAR 14.407-3(g)(5). The Navy therefore rejected TLC's bid. The Comptroller General upheld Navy's decision.

8.1.1 Suspected Mistakes in Bids (cont)

Determine the Reasonableness of a Low Bid

As demonstrated in the above cases, bid verification gives you the opportunity to investigate the reasons for a bid that is "far out of line" with other bids or your should-pay estimate. Reject such a bid when the evidence supports a finding that the bidder is nonresponsible, misunderstands the requirement, or has underestimated the costs and risks of performance. Accept the bid when the evidence establishes that the bidder can ably perform at the price bid (e.g., because the bidder is the most efficient performer or has knowingly submitted a below-cost bid and has the financial reserves to cover probable losses). You may have to cancel the IFB if your investigation uncovers a Government mistake (e.g., a defective requirement).

8.1.2 Unbalanced Bids

Introduction

You must analyze bids to determine if they are unbalanced with respect to:

- The total price of the bid, or
- Separately priced line items.

This is particularly important when evaluating the:

- Price for first article tests, or test items, in comparison with the price for production units.
- Prices for options in comparison with the prices for the basic contract requirements.

Reject Materially Unbalanced Bids

FAR 14.404-2(g)

You may reject materially unbalanced bids. A bid is **materially unbalanced** IF it is **mathematically unbalanced** AND one of the following is true:

- There is reasonable doubt that the lowest evaluated bid will actually result in the lowest cost to the Government.
- The offer is so grossly unbalanced that its acceptance would be tantamount to allowing an advanced payment.

A bid is **mathematically unbalanced** IF it is based on prices that are significantly less than cost for some line items AND significantly more than cost for other line items.

Identification of Materially Unbalanced Bids

In sealed bidding, you must normally use price analysis to determine if bids are materially unbalanced.

For example. You could use the following price analysis comparisons to determine if bid prices for a contract requiring both first article testing and production are materially unbalanced:

- Compare all bids to determine if the structure of any bid differs significantly from the structure of other bids concerning the pricing for first articles and production units. (Does one bid contain a first article price that is significantly greater than other bids, while production units are significantly cheaper?)
- Compare the production unit price with the price of similar production units.

8.1.2 Unbalanced Bids (cont)

Identification of Materially

- Compare the difference between the first article price and the production unit price, with the price differences experienced

Unbalanced Bids (cont)

between first article and production units on contracts for similar items.

- Compare the difference between the first article price and the production unit price, with the Independent Government Estimate of the price of first article test effort, excluding the price of the units required for test.
- Compare the price for the first article and the price for production units with the Independent Government Estimates.

Unbalanced Bid Decision Document-ation

FAR 14.404-2(g)

You should carefully document your analysis of bids that appear to be materially unbalanced. This documentation will form the basis for any determinations and Government actions. If analysis supports a determination that the bid is materially unbalanced, you may reject the bid.

If you accept the bid and questions arise later during contract performance, the documentation will provide information on the facts that were considered during analysis.

Example of a Materially Unbalanced Bid

Comp Gen B-236790.2

In the case of Person System Integration, Ltd., the Comp Gen found that the PSI bid was unbalanced because the bid was front-loaded. A fixed-price service contract was to be awarded for a firm requirement for a 60-day mobilization period, an initial 10-month option period, 3 subsequent option years, an additional 10-month option period, and a final 60-day transition option period.

The Comp Gen found that PSI's price for the 60-day mobilization period was 63 percent of the price for a 1-year performance period and 22 percent of the potential 5-year contract. PSI stated that the amount included the cost of extensive advance purchases of replacement parts. However, the Comp Gen found the amount to be so far in excess of the actual value of the items or services to be provided that acceptance of the bid would provide a disincentive for the Government to administer (i.e., terminate) the contract after the enhanced payments were made.

8.2 Determine Need to Cancel the IFB

Overview

In this Section

This section covers the following topics:

TOPIC	SEE PAGE
8.2.1 Price-related Reasons for Canceling Invitations	8-19
8.2.2 Negotiation After Cancellation	8-25

8.2.1 Price-Related Reasons for Canceling Invitations

Reasons for Canceling IFBs

FAR 14.404-1(b)
FAR 14.404-1(c)

FAR provides eleven possible reasons for canceling an invitation for bid (IFB) after bid opening. The highlighted subparagraphs show that five of the eleven are pricing-related:

(b) When it is determined before award but after opening that the requirements of FAR 11.201 (relating to the availability and identification of specifications) have not been met, the invitation shall be canceled.

(c) Invitations may be canceled and all bids rejected before award but after opening when, consistent with subparagraph (a)(1) above, the agency head determines in writing that—

(1) Inadequate or ambiguous specifications were cited in the invitation;

(2) Specifications have been revised;

(3) The supplies or services being contracted for are no longer required;

(4) The invitation did not provide for consideration of all factors of cost to the Government, such as cost of transporting Government-furnished property to bidders' plants;

(5) Bids received indicate that the needs of the Government can be satisfied by a less expensive article differing from that for which the bids were invited;

(6) All otherwise acceptable bids received are at unreasonable prices, or only one bid is received and the contracting officer cannot determine the reasonableness of the bid price;

(7) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith (see Subpart 3.3 for reports to be made to the Department of Justice);

(8) No responsive bid had been received from a responsible bidder;

(9) A cost comparison as prescribed in OMB Circular A-76 and Subpart 7.3 shows that performance by the Government is more economical; or

(10) For other reasons, cancellation is clearly in the public's interest.

8.2.1 Price-Related Reasons for Canceling Invitations (cont)

Situations Requiring Cancellations

FAR 14.404-1(b) & (c)

The following table summarizes the five price-related reasons for canceling the solicitation after bid opening, how to avoid each situation and analyze it when it occurs.

POSSIBLE CANCELLATION SITUATION	AVOIDING THE SITUATION	ANALYZING THE SITUATION WHEN IT OCCURS
IFB DID NOT CONSIDER ALL FACTORS OF COST	In earlier chapters, you learned about selecting and applying price-related factors in making the award decision. In preparing a solicitation, you should consider the principles presented in those two chapters. Doing so should help you avoid most situations in which you must cancel an IFB for failing to properly consider all factors of cost to the Government. During the solicitation period, you must be alert to price- related factors that are not considered in the solicitation. Carefully review comments and questions received from potential bidders to identify such factors.	In price analysis, you must apply the price-related factors included in the award criteria. During your analysis, you must be alert to identifying price- related factors that were not properly considered in developing the award criteria and to identifying important price- related factors that were not considered at all.
GOVERNMENT NEEDS CAN BE SATISFIED WITH LESS EXPENSIVE PRODUCT	Establish a best estimate of price or value as part of acquisition planning. In that process, you should carefully review the purchase request estimate, analyze market data and acquisition histories, and identify and collect other related pricing data. During that review, you must be alert to alternative products that will meet Government needs at a lower total cost. If you identify a lower priced product, coordinate with the requiring activity to assure that the product is acceptable. If it is, assure that the solicitation is modified to permit bidders to furnish the product identified. Develop solicitations that: • maximize competition • maximize use of commercial products, and • eliminate unnecessary costs. During the solicitation period, you must be alert to alternative products.	During your efforts to determine price reasonableness, you should consider pricing yardsticks and cost estimating relationships based on the prices of similar items. You may also request Government technical personnel to perform a visual or value analysis. Either approach to price analysis could identify a product, other than the product for which bids were solicited, that will meet Government requirements at a lower price. Review the impact of the specification on bids, bearing in mind that revising the specification can be a reason for canceling the solicitation.

(Chart continued on next page)

8.2.1 Price-Related Reasons for Canceling Invitations (cont)

Situations Requiring Cancellations (cont)

Continuation of the table summarizing the five price-related reasons for canceling the bid after bid opening how to avoid each situation and analyze it when it occurs.

Possible Cancellation Situation	Avoiding the Situation	Analyzing the Situation When It Occurs
Unacceptable Prices for Otherwise Acceptable Bids	Maximize price competition. Efforts such as source development, proper selection of business terms, and appropriate publicizing of the purchase should maximize price competition. Adequate price competition should encourage bidders to submit fair and reasonable prices.	Analyze significant differences between different estimates of price reasonableness and between the estimates and actual prices. Both vendor differences and market differences must be carefully explored before you determine that a price is so unacceptably high as to justify cancellation.
Bids Not Arrived At Independently	Encourage independent bid development. Special care must be taken to avoid brand name purchase descriptions and specification requirements that require all bidders to use a key component or technology controlled by one of the competitors. Such requirements make independent bid development a practical impossibility. During the solicitation period, you must be alert to potential bidder comments concerning specifications that will restrict independent competition.	Earlier in the text, you learned about practices and events that indicate collusive practices and potential antitrust violations. You also learned about the importance of thorough review before making any allegation of collusive practices.

(Chart continued on next page)

8.2.1 Price-Related Reasons for Canceling Invitations (cont)

Situations Requiring Cancellations (cont)

Continuation of the table summarizing the five price-related reasons for canceling the bid after bid opening, how to avoid each situation and analyze it when it occurs.

POSSIBLE CANCELLATION SITUATION	AVOIDING THE SITUATION	ANALYZING THE SITUATION WHEN IT OCCURS
MORE ECONOMICAL GOVERNMENT PERFORMANCE	The Government is always a potential competitor to perform required services. If you have reason to believe that the bid price will be higher than the cost of Government performance, request that Government personnel prepare a cost estimate under the provisions of FAR 7.304 and include the notice required by FAR 52.207-1, Notice of Cost Comparison (Sealed Bid), in the IFB. This action will put potential bidders on notice that the requirement may be performed in-house and encourage price competition.	If a cost estimate has been prepared under the requirements of FAR 7.304 and the appropriate notices included in the IFB, open the cost comparison form containing the Government performance cost estimate at the time of bid opening. After evaluation of bids and determination of low bidder responsibility, provide the low bid price to the organization that prepared the Independent Government Estimate for final cost comparison. Provide cost comparison results to the agency authority responsible for deciding between Government and contract performance. [FAR 7.306] If the cost estimate has not been prepared under the requirements of FAR 7.304 and the appropriate notices have not been included in the IFB, the solicitation cannot be formally compared with the cost of Government performance under FAR 7.306. However, the contract price must still be determined reasonable based on other bases of price analysis. If the price cannot be determined to be reasonable, you must consider cancellation of the solicitation based on unreasonable prices. At that time, you should schedule the requirement for a formal cost comparison under FAR Subpart 7.3, if you believe that Government performance would be more economical.

8.2.1 Price-related Reasons for Canceling Invitations (cont)

Decision to Cancel the Invitation

In some circumstances, when you are determining if the invitation should be canceled, you will need to consider the relative advantages and disadvantages to the Government. In other circumstances, the pricing concern is so great that you should cancel the solicitation whenever the situation is confirmed to exist.

POSSIBLE CANCELLATION SITUATION	**RECOMMEND INVITATION CANCELLATION IF ......**
IFB DID NOT CONSIDER ALL FACTORS OF COST	One of the following statements about the IFB is true: • It did not consider all price-related factors, or • It did not properly consider all price-related factors **AND** The lack of proper consideration will affect selection of the successful bidder, **AND** The anticipated total cost to the Government for canceling the solicitation and soliciting new bids with revised award criteria is less than the cost for proceeding with award under the current award criteria.
GOVERNMENT NEEDS CAN BE SATISFIED WITH LESS EXPENSIVE PRODUCT	An alternative product will satisfy the needs of the Government at a lower price, **AND** The total cost to the Government for canceling the solicitation and resolicitation is less than the cost for proceeding with award under the current award criteria.
UNACCEPTABLE PRICES FOR OTHERWISE ACCEPTABLE BIDS	The Government's requirement can be deferred, **OR** There is reason to believe that canceling and resoliciting or negotiating would result in an acceptable price*
BIDS NOT ARRIVED AT INDEPENDENTLY	Available information demonstrates that bids were not arrived at independently.
MORE ECONOMICAL GOVERNMENT PERFORMANCE	The cost estimate for Government performance was prepared prior to bid opening under the terms of FAR 7.304, **AND** The appropriate notices were included in the solicitation, FAR 7.305, **AND** Cost comparison demonstrates sufficient savings, as defined in OMB Circular A-76, to warrant in-house Government performance, **AND** The responsible agency official determines that performance by the Government is in the Government interest.

* Because you expect demand to decline relative to supply, or you expect to reenter the market at a more favorable point in the cycle, or you have plans for source development, or you plan to resolicit under business terms and conditions which are more in keeping with market norms, etc.

* Because you expect demand to decline relative to supply, or you expect to reenter the market at a more favorable point in the cycle, or you have plans for source development, or you plan to resolicit under business terms and conditions which are more in keeping with market norms, etc.

8.2.1 Price-related Reasons for Canceling Invitations (cont)

Document Your Decision

Whenever you consider an invitation cancellation, you should document your analysis and decision process. Documentation is essential to support the decision by the agency head, or delegated official, to cancel an invitation for bids.

Documentation is also necessary when a determination is made not to cancel the solicitation. Buyers will later be able to use the information provided in acquisition planning to prevent similar situations and possible solicitation cancellations.

8.2.2 Negotiation After Cancellation

Introduction

Negotiation after IFB cancellation is authorized in two of the situations where the invitation may be canceled for pricing-related reasons. To use negotiations to complete the sealed-bid acquisition, the agency head, or delegated official, must determine that the invitation is to be canceled and that the use of negotiations is appropriate to complete the acquisition.

Possible Cancellation Situations

FAR 14.404-1(e)
DFARS 14.404-1

The table below identifies five possible cancellation situations and describes whether acquisition through negotiation is authorized after IFB cancellation.

Possible Cancellation Situation	Is completion of the Acquisition through Negotiation authorized after IFB Cancellation?
IFB Did Not Consider All Factors of Cost	No, acquisition completion through negotiation is not authorized. Proceed with a new acquisition.
Government Needs Can be Satisfied With Less Expensive Product	No, acquisition completion through negotiation is not authorized. Proceed with a new acquisition.
Unacceptable Prices for Otherwise Acceptable Bids	Yes, if authorized by the agency head, or delegated official, in the determination to cancel the IFB.
Bids Not Arrived at Independently	Yes, if authorized by the agency head, or delegated official, in the determination to cancel the IFB.
More Economical Government Performance	Not applicable.

8.2.2 Negotiation After Cancellation (cont)

Make Award Without Issuing a New Solicitation

FAR 15.103

When authorized, you may negotiate and make award without issuing a new solicitation, if the following conditions apply:

- Prior notice of intention to negotiate and a reasonable opportunity to negotiate must be given by the contracting officer to each responsible bidder who submitted a bid in response to the IFB.
- The negotiated price must be the lowest offered by any responsible bidder.
- The negotiated price must be lower than the lowest rejected bid submitted by a responsible bidder in response to the IFB.

Chapter Vignette (cont)

Widget Acquisition (cont)

From this and earlier chapters, you know that you cannot assume that a price is reasonable simply because you have price competition. In this chapter, you learned about specific situations in which you must decide not to award to the responsive, responsible bidder with the lowest evaluated price.

For example, let's look at the answers to the two questions asked at the beginning of the chapter.

- *What should you have done if your estimated should-pay price per widget was $7,000 and the low offer $4,850?*

  If the low bid is unreasonably low, the contracting officer CAN REJECT the low bid.

- *What should you have done if your estimated should-pay price per widget was $2,500 and the low offer $4,850?*

  If all bids are too high, the IFB CAN BE CANCELED based on a written determination by the agency head or an authorized representative.

Price-Related Decisions In Negotiations — CHAPTER 9

Chapter Vignette

Widget Acquisition (cont)

In sealed bidding, your price-related decisions are relatively limited. Most of the time, your only decision is to determine whether the price of the responsive, responsible bidder with the lowest evaluated bid is fair and reasonable. When using negotiation procedures, you must typically consider a larger range of price-related decisions on every procurement. In this chapter, you will learn more about these decisions and points to consider in making them.

Cost information. *If you were using negotiation procedures in your widget acquisition, you would not need to request cost or pricing data or information other than cost or pricing data. You have competitive prices, effective market research, and a valid Independent Government Estimate to use as bases for your pricing decision.*

Discussions. *If your widget solicitation provides for award without negotiation, you must determine if such an award will be most advantageous for the Government. If it will, process the contract for award. If it will not, document the file with the details of your analysis, and proceed with negotiations.*

Competitive range. *If you decide to negotiate, you would negotiate with all firms in the competitive range. Following the steps identified in this chapter, you must decide which firms should be included in the competitive range.*

Fact-finding. *Any fact-finding for the widget acquisition would probably be limited. You have several competitive offers and a good price history. Despite the large dollars involved, you would probably fact-find by telephone. If important issues are uncovered, the fact-finding might be elevated to a face-to-face meeting or even a plant visit.*

Pre-negotiation positions. *After fact-finding and prior to negotiation, you would establish your pre-negotiation positions, including a position on price. You would use all the information collected throughout the acquisition process to develop your positions.*

Potential trade-offs. *Also prior to negotiations, you would determine if there are any trade-offs that would improve the overall benefit to the Government.*

For example:

- *Could you obtain a significant price reduction for a change in requirements that will not affect Government use of the widget?*
- *Could you obtain a significantly better product at no increase in price, or only a slight increase in price?*

Need to cancel and resolicit. *In extreme situations, you may need to decide whether to cancel the solicitation and resolicit.*

Learning Objectives

At the End of This Chapter

At the end of this chapter you will be able to:

Classroom Learning Objective 9/1
Determine need for cost breakdowns.

Classroom Learning Objective 9/2
Determine need for discussions.

Classroom Learning Objective 9/3
Identify criteria for establishing the competitive range and determine whether to exclude an offer from the range based on price-related concerns.

Classroom Learning Objective 9/4
Identify price-related aspects of the proposal that are unclear and require a fact-finding session to prepare for negotiations.

Classroom Learning Objective 9/5
Establish prenegotiation positions on price (lowest reasonable price, the highest reasonable price, and the target price) by applying selected techniques.

Classroom Learning Objective 9/6
Identify potential trade-offs between price and other terms and conditions.

Classroom Learning Objective 9/7
Determine need to cancel and resolicit.

9.0 Introduction (cont)

In This Chapter

In this chapter you will learn how to:

SECTION	DESCRIPTION	SEE PAGE
9.1	Determine the Need for Cost Information	9-5
9.2	Determine the Need for Discussions	9-8
9.3	Determine the Competitive Range	9-10
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9.5	Establish Pre-Negotiation Price Positions	9-17
	9.5.1 Analyze Risk	9-18
	9.5.2 Develop Negotiation Positions	9-19
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9.7	Determine the Need to Cancel and Resolicit	9-25

(Overview continued on next page)

9.0 Introduction (cont)

Procedural Steps

The following figure shows the sequence of events or steps that you should follow to make price-related decisions in negotiations.

9.1 Determine The Need For Cost Data

Situations Where Additional Information Might Be Necessary

FAR 15.802(a)
FAR 15.804-2

After you receive a proposal and perform your initial evaluation, you may determine that you need additional information on offeror costs before you can make a final decision on price reasonableness. You can require an offeror to information on proposed costs prior to contract award. However, bear in mind that the offeror will need additional time to produce the data and that you will need additional time to analyze the data — which will probably delay award. Hence, requesting cost data should be a last resort when one of the following situations exists:

- You cannot justify exempting the offeror from the requirement for certified data.

  Example 1: Offeror request for exception denied. Suppose you are using negotiation procedures and received only one offer. That offer exceeded the cost or pricing data threshold. The offeror requested an exception from the requirements for cost or pricing data, but you determined that the offer did not qualify for the exception requested or any other exception. In such situations, you must require submission of certified cost or pricing data

  Example 2: Single offer over the cost or pricing data threshold . Suppose you expected adequate price competition, but received only one offer. That offer exceeded the cost or pricing data threshold. After further market research, you determined that you were wrong to expect price competition, because only one firm makes and sells an item than meets Government requirements. You also determine that no other exception applies (such as the exception for prices based on recent adequate price competition). In such situations, you must require submission of certified cost or pricing data.

9.1 Determine The Need For Cost Data (cont)

Situations Where Additional Information Might Be Necessary (cont)

FAR 15.804-2
FAR 15.804-5

- Price analysis alone is not sufficient to establish the reasonableness of proposed prices.
  Example 1: Competition cost realism. Suppose you are using negotiation procedures for an acquisition with an estimated price in excess of the cost or pricing data threshold. You received two proposals but you are not convinced that the price of the apparent successful offer is fair and reasonable. Price comparisons between the competitive offerors are not very useful in price analysis because the two offerors submitted such different technical proposals in response to the contract performance requirements. After comparing the price of the apparent successful offer with historical data and commercial prices, you are not convinced that it is reasonable. In such situations, you can require the offerors to submit information other than cost or pricing data to support your pricing decision.

  Example 2: Single offer below the cost or pricing data threshold. Suppose that you did not require the offeror to submit cost or pricing data because the estimated acquisition price did not exceed the cost or pricing data threshold. Now the offeror has submitted a proposal with a price that (while below the threshold) appears unreasonable, based on comparison with commercial prices and the item price history. In such situations, you could require the offeror to submit cost information other than cost or pricing data. Alternatively, you might require cost or pricing data if authorized by the head of the contracting activity.
  Example 3: Single offer in simplified acquisition. Suppose that you are using simplified acquisition procedures and the only offeror submitted a proposal with a price that appears unreasonable, based on comparison with commercial prices and the item price history. In such situations, you could require the offeror to submit cost information other than cost or pricing data. You could not require cost or pricing data because the anticipated acquisition price is less than the simplified acquisition threshold.

9.1 Determine The Need For Cost Data (cont)

Requiring Cost or Pricing Data

FAR 15.804

You have learned that you:

- MUST REQUIRE an offeror to submit cost or pricing data for non-competitive contract actions over the cost or pricing data threshold, unless an exception applies.
- MAY REQUIRE an offeror to submit cost or pricing data for acquisitions below the cost or pricing data threshold but over the simplified acquisition threshold, when you have approval from the head of the contracting activity.

FAR 15.804-6(b)

Only require cost or pricing data when you expect to require the offeror to complete a Certificate of Current Cost or Pricing Data. When you require an offeror to submit cost or pricing data, require the offeror to submit complete data on all elements of cost using a Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet, unless the contract action is a contact termination. For a contract termination, require the offeror to submit data using one of the contract termination forms prescribed in FAR 49.6.

Requiring Information Other Than Cost or Pricing Data

FAR 15.804-5

When cost analysis is necessary for a contract action excepted from cost or pricing data requirements or below the cost or pricing data threshold, request information other than cost or pricing data. When requesting information other than cost or pricing data, you may require information on only one element of cost or you can require a complete cost proposal. Limit your requirement to those data necessary to determine whether the proposed price is reasonable.

FAR 15.804-6(b)

Never require an offeror to submit a SF 1411 with information other than cost or pricing data. If you require a cover page, you may use an SF 1448, Proposal Cover Sheet.

9.2 Determine The Need For Discussions

Introduction

As the contracting officer, you must determine the need for negotiations. **Do not conduct discussions with offerors when they are not necessary.**

If offerors know that award is likely to occur without negotiations, they will be encouraged to submit better offers initially. If they know that you will always negotiate, they may wait until your request for a best and final offer (BAFO) to submit a truly competitive price. Many offerors actually distrust the security of the competitive negotiation process and fear that their price will leak to competitors.

When Not to Conduct Discussions with Offerors

FAR 15.610(a)

You do **not** need to conduct discussions when one of the following situations exists:

- Prices are fixed by law or regulation.
- The offer is for the set-aside portion of a partial set-aside.
- **Both** of the following are true:
  - ◊ The solicitation notified all offerors that the Government intends to evaluate proposals and make award without discussion, unless the contracting officer determines the discussions (other than communications conducted for the purpose of minor clarification) are necessary.
  - ◊ After initial proposal evaluation, the contracting officer does not document the need for written or oral discussions.

9.2 Determine The Need For Discussions (cont)

Minor Clarification

FAR 15.607(a)

Even when you do not contemplate discussions, you must examine all proposals for minor informalities or irregularities and apparent clerical mistakes. Communications with offerors to resolve these matters is clarification, not discussion within the meaning of FAR 15.610. However, if the resulting communications prejudice the interest of other offerors, you must not make award without discussions with all offerors within the competitive range.

Use the following 5-step procedure for proposal clarification:

1. If you suspect a mistake in a proposal, advise the offeror (pointing out the suspected mistake or otherwise identifying the area of the proposal where the suspected mistake can be found) and request verification.
2. If the offeror verifies the mistake, you may make award if you believe that the price is fair and reasonable.
3. If the offeror alleges a mistake, advise the offeror that the firm may withdraw the proposal or seek correction.
4. If an offeror requests permission to correct a mistake, the agency head (or designee not below head of the contracting activity) may make a written determination permitting correction, provided that:
    - ◊ Both the existence of the mistake and the proposal actually intended are established by clear and convincing evidence from the solicitation and the proposal, and
    - ◊ Legal review is obtained before making the determination.
5. If an offeror-requested correction cannot be permitted in accordance with Step 4 above, and you still intend to award without discussion, give the offeror a final opportunity to withdraw or verify its proposal.

9.2 Determine The Need For Discussions (cont)

Discussions Required

Discussions are not required simply because you require offerors to submit information other than cost or pricing data.

FAR 15.610(a)

Discussions are required:

- Whenever the solicitation did not notify all offerors that the Government intends to award without discussions.
- When proposal correction requires reference to documents, worksheets, or other data outside the solicitation and proposal in order to establish the existence of a mistake, the proposal intended, or both.
- Discussions are required when unnecessary ambiguities in contract terms and conditions make clarification essential to obtaining an effective contract as well as fair and reasonable prices.

9.3 Determine The Competitive Range

Competitive Range

FAR 15.610(b)

Once you make the decision to negotiate, you must determine which firms will participate in discussions**.**

FAR requires that you conduct negotiations with all firms in the competitive range.

FAR 15.609(a)

As you determine the competitive range, consider offer cost or price and the other factors identified in the solicitation contract award criteria. Include all offers with a reasonable chance of being selected for award in the competitive range. Exclude offers that do not have a reasonable chance of being selected for award. If you are not sure whether an offer has a reasonable chance of being selected for award, include the firm in the competitive range.

Steps for Determining the Competitive Range

When you determine the competitive range, you should follow these steps:

FAR 15.609(a)

1. **Evaluate All Proposals.** Evaluate all proposals considering all award criteria (price and technical) established in the solicitation. **Remember, before you consider price in proposal evaluation, price must be a significant factor in award decision.**

2. **Identify Evaluation Scores Groupings.** Identify the grouping, or arrangement, of evaluation scores for all proposals. This may be done by arranging the proposals from highest to lowest score and then looking for breaks in the scores such that natural groupings of similar scores may be identified.

FAR 15.609(a)

3. **Identify All Proposals With a Reasonable Chance.** Identify all proposals which have a reasonable chance of being selected for award. If you have any doubt about whether the proposal is or is not in the competitive range, the proposal should be included.

FAR 15.609(c)

4. **Notify Unsuccessful Offerors.** You must notify an unsuccessful offeror in writing as soon as practical after determining that the proposal is no longer eligible for award.

9.3 Determine the Competitive Range (cont)

Evaluate Proposed Price

FAR 15.608(a)(1)

As you evaluate each proposal, use price analysis as one of the tools in determining the offeror's capability to perform the contract. Determine if:

- The proposed price is reasonable.
- The proposed price indicates that the offeror understands the contract requirements.
- The offeror has the ability to perform the work at the proposed price.

Consider the Estimates of Contract Price

As you determine which proposals have a reasonable chance of being selected for contract award, you should consider proposal price groupings and the estimates of contract price that you developed during the solicitation process.

- If all the bases indicate that the price should be $350,000, you should be reasonably confident that the price will be very close to $350,000.
- If one price analysis base tells you that the price should be $320,000 and another tells you that it should be $370,000, you should be reasonably confident that the price will be between $320,000 and $370,000.

Evaluation Practices to Avoid

When determining the competitive range, you **should not**:

- Establish arbitrary limits based on the proposal with the most favorable evaluation.

  Example 1. Do not arbitrarily determine that all proposals with prices within 20 percent of the most favorably evaluated proposal will be included in the competitive range and all others excluded.

  Example 2. Do not arbitrarily determine that price competition does not exist if none of the prices are within 20 percent of the proposal with the most favorable evaluation. This situation may require investigation to determine if one competitor has a lock on the competition. However, it does not call for an immediate decision that competition does not exist.

Evaluation Practices to Avoid (cont)

In addition, you **should not**:

- Establish arbitrary limits based on the Independent Government Estimate or a preset evaluation score.

- Exclude any proposal from the competitive range unless you believe that it is so deficient, or out of line in price or technical merit, as to preclude further meaningful negotiations.
- Include any proposal in the competitive range when your evaluation tells you that the proposal definitely does not have a reasonable chance of being selected for award.

Example of Proper Exclusion from Competitive Range

Comp Gen B-239116

In the matter of Cadd Management Systems, Inc., the Comp Gen found that Cadd had been properly excluded from the competitive range. Cadd protested the exclusion from the competitive range of its proposal under an RFP issued by the Department of Interior for engineering and drafting services at the Grand Coulee Dam. Cadd's proposal was excluded from the competitive range because Cadd's proposed price was so much higher than the prices of other proposals that received similar technical scores. The Department of Interior did not consider Cadd to have a reasonable chance of receiving an award. Cadd contended that in determining its price it relied on information not revealed to other offerors as to the true scope of the work, and thus Cadd was the only offeror whose price accurately reflected the solicitation requirements. The Comp Gen found that the facts did not support the Cadd contention.

9.4 Determine The Need For Fact-Finding

Overview

Definition

Fact-finding is the search for facts to support development of your negotiation objectives. Some contracting personnel define the term broadly to include any search for pricing and product information from any source.

FAR 15.807

It is more common to limit the definition of fact-finding to mean the **search for offeror information not provided with the proposal.** The material in this text, is based on this more limited definition of the term.

Fact-Finding and Negotiations

Fact-finding is not negotiations. In fact-finding you should:

- Ask questions.
- Offer information on Government requirements.
- **Not** present a Government position on proposal deficiencies or what the price should be.

FAR 15.609
FAR 15.610

Even though fact-finding is not negotiations, it is considered to be discussions under FAR 15.609 and 15.610. If you engage in fact-finding with one offeror, you are obligated to conduct discussions with all offerors in the competitive range.

Need for Fact-Finding

In determining the need for fact-finding and the method to use, you should consider:

- Need for discussions.
- Technical complexity of the requirement.
- Dollars involved.
- Amount and intensity of competition for the contract.

If discussions are not required, do not conduct fact-finding.

9.4 Determine The Need For Fact-Finding (cont)

Areas for Fact-Finding

The search for additional offeror information can center on any element of the offeror’s proposal --- technical, business management, or price. You can use fact-finding to:

- Clarify apparent clerical mistakes in the proposal.
- Obtain any missing information necessary to apply price-related factors (e.g., the specific point of origin if the terms are F.O.B. Origin).
- Collect additional facts to clarify the proposed price or any conditions attached to the proposed price by the offeror.

Key Questions

Questions generally center on a review of contract requirements and the offeror's understanding of those requirements. Answers to these questions have an important bearing on the development of price negotiation objectives. If, for instance, you can identify areas for possible elimination, you should reflect the potential savings in your price negotiation objectives.

As you proceed through fact-finding, keep two questions in mind:

- **Is this required by the contract?**

  Different offerors often have different understandings of the Government requirements. One firm may offer less than what is required. Another may offer more. An offer of less than what is required is unacceptable. An offer of more is "gold plating" by the offeror and will normally result in higher prices. Reject "gold plating" when it increases contract price. Occasionally, the offeror will say, "This is what the user really wants." Remember, the contract must define the needs of the Government. If the Government truly needs a premium product, the contract must specify the premium product. If it does not, the offeror should be advised that the product offered exceeds Government requirements.

- **Is this requirement really necessary?**

You should always be on the lookout for "gold plating" in the Government's requirements. Analyze Government requirements and industry standards. If it appears that the contract requires more than what is needed by the Government, question the requirement. Be sure that you coordinate and clear any changes in contract requirements with the proper Government officials before you make them. All offerors still in the competitive range must be advised of any change in requirements.

9.4 Determine The Need For Fact-Finding (cont)

Levels and Methods of Fact-Finding

Fact-finding can be performed at different *levels of intensity,* and using different *methods of communication*. The fact-finding should be tailored to the particular contracting situation. You must use your own judgment in determining the proper method of fact-finding, but various methods seem to work better in some situations than in others.

For Example. Written communications are more likely to be used in competitive situations than in noncompetitive situations. Written communications provide a record for impartial review that is very important when a source selection decision is made under competition, but it does not provide the free interchange that is very important in noncompetitive negotiations.

The following table identifies common methods of fact-finding and typical contracting situations for use of each method.

METHOD OF FACT-FINDING	**TYPICAL CONTRACTING SITUATION**
Telephone conversation to clarify limited points about the offeror's proposal.	Relatively simple requirement and low dollar value.
Face-to-face meeting in your office or conference room. The meeting might include only you and a single representative from the offeror, or it might include a variety of technical specialists on both sides.	Moderate requirement complexity and dollar value.
Face-to-face meeting at the offeror's facility or the job site. Such meetings typically include one or more technical specialists on both sides.	Relatively complex requirement and high dollar value.
Written request for proposal clarification or identification of a proposal deficiency.	Relatively complex competitive requirement where documentation is required.

9.5 Establish Pre-Negotiation Price Positions

Overview

In this Section

This section covers the following topics:

TOPIC	SEE PAGE
9.5.1 Analyze Risk	9-18
9.5.2 Develop Negotiation Positions	9-19

Introduction

To negotiate effectively, you must establish price positions before negotiations begin. Many buyers fail in negotiations because they believe that there is only one price that is reasonable for a particular contract requirement. They believe that it is their job to force the offeror to accept that price.

9.5.1 Analyze Risk

Risk in Pricing

As you begin to develop your price negotiation positions, you must analyze the risk involved. The acquisition may be the 99th acquisition of a standard commercial item or it may be the first acquisition of complex state-of-the-art equipment manufactured to precise Government specifications.

Acquisition of the standard commercial item may involve little pricing risk. You have price histories, commercial item price comparisons, and competition. All will likely lead you to the same should-pay price or very similar should-pay prices.

The state-of-the-art item will likely have a much higher level of pricing risk. You may have only the Independent Government Estimate. Commercial items may permit only very general comparisons. These different price estimates may lead you to a wide range of prices that appear reasonable.

Risk Assessment and Should-Pay Prices

You must begin to estimate should-pay prices when you begin acquisition planning, and you should continue to refine your estimate as information is collected throughout the acquisition process. Use judgment in evaluating the reliability of each estimate when developing the total estimate of the price the Government should pay.

Judgment In Risk Assessment

It is likely that, given the same data, buyers and sellers will develop different judgments on which price is most reasonable. These judgments will be based on different perspectives and different assessments of the risk involved. Sellers are concerned about being able to complete contracts, cover costs, and make a profit. Buyers are concerned about contract completion, limited budgets, fairness to all offerors, and the public perception of their actions.

9.5.2 Develop Negotiation Positions

Introduction

When using negotiation procedures, you may encounter two different types of discussion in an effort to arrive at agreement on price:

- Noncompetitive discussions (single-source)
- Competitive discussions.

In personal business negotiations, it is common to follow the same general procedures in both types of discussion. We can negotiate the best deal we can with one firm and then move to the next. Often, we tell the second firm the price offered by the first and ask if the firm can offer a better price.

In Government negotiation, the different types of discussions must be approached differently.

Non-competitive Negotiations vs. Competitive Discussions

FAR 15.610(e)

In Government **noncompetitive** discussions, you and the offeror exchange offers until a settlement is reached. The price agreement represents a position that both sides can accept.

In Government **competitive** discussions, you cannot make a counteroffer to the offeror. A counteroffer implies that, if it is accepted, you will have a contract agreement. Since you must consider all offers in the competitive range, you cannot make such a commitment. In addition, you cannot provide any offeror with technical or price information from another offeror's proposal. Providing technical information is known as **technical transfusion**. Providing price information is known as **auctioning**. Both practices are forbidden by law and regulation.

You must consider these differences as you prepare your negotiation positions.

9.5.2 Develop Negotiation Positions (cont)

Price Positions in Non-competitive Negotiations

In a noncompetitive negotiation, develop three different price positions:

- Minimum
- Objective (or target)
- Maximum

Both parties to a negotiation expect movement by the other party. If you offer one price throughout the negotiation, you may appear inflexible and cause offeror consternation. Different positions also provide you with an opportunity to collect information needed to understand the offeror's perspective on a reasonable price, and to sell the reasonableness of your negotiation positions.

Your negotiation positions on price should be based on price estimates developed during the acquisition process.

- **The minimum price position** should be your starting place in negotiations and your first offer. Never offer a price that cannot be supported by reasoned analysis.
- **The objective, or target, price position** should be the price that you think is most reasonable, based on your analysis of the reliability of different price estimates. It should be the price that you think the Government should pay.
- **The maximum price position** should be the highest price that you can reasonably accept, given the information you have at the beginning of the negotiation. The maximum price may change during negotiations if additional information is presented by the offeror that changes the situation.

9.5.2 Develop Negotiation Positions (cont)

Price Positions in Competitive Discussions

Before entering into competitive discussions, develop **separate** minimum, objective, and maximum positions for **each** proposal. Use these positions in identifying the strengths, weaknesses, deficiencies, and uncertainties in the offeror's proposal.

FAR 15.610(c)

In competitive discussions, you must:

- Advise the offeror of deficiencies in its proposal so that the offeror is given an opportunity to satisfy the Government's requirements. This includes your reasons (if any) for believing that the offeror's pricing is deficient based on comparisons with historical prices, commercial prices, yardsticks, and Independent Government Estimates.
- Attempt to resolve any uncertainties concerning the technical proposal and other terms and conditions of the proposal.
- Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offeror's proposals or the evaluation process. This is especially important when the proposed price is **below** your minimum position.
- Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal that may result from the discussions.

9.5.2 Develop Negotiation Positions (cont)

Price Positions in Competitive Discussions (cont)

In competitive discussions, you also can:

- Point to other indicators that the proposed price is too high (e.g., the producer price index).
- Point out any proposal variation from the RFP's business terms or conditions that you believe is unnecessary and has affected the proposed price.
- Discuss (i.e., ask "what if" questions about) potential tradeoffs between price and other contract terms.

In competitive discussions, you cannot:

FAR 15.610(d)
FAR 15.610(e)

- Use auction techniques, such as—
  - ◊ Indicating to an offeror a cost or price that it must meet to obtain further consideration,
  - ◊ Advising an offeror of its price standing relative to another offeror (however, it is permissible to inform an offeror that its price is considered by the Government to be too high or unrealistic), and
  - ◊ Otherwise furnishing information about other offeror's prices.
- Engage in technical leveling—helping an offeror to bring its proposal up to the level of other proposals through successive rounds of discussion, by pointing out weaknesses resulting from an offeror's lack of diligence, competence, or inventiveness in preparing the proposal.
- Engage in technical transfusion — disclosing technical information provided by one offeror to another offeror, resulting in improvements to the second offeror's proposal.
- Otherwise tell one competitor about the offers of other competitors. Such action could give favored firms an unfair advantage and is forbidden by law and regulation.

FAR 15.611

It is up to the offeror to determine how the offer should be modified. All offerors must be provided an opportunity to submit a best and final offer (BAFO) that includes changes to their proposal that resulted from the negotiations. Note that, if no offeror submits a BAFO below your maximum price position for that offeror, you might have to consider canceling the RFP because of unreasonable pricing.

9.6 Consider Potential Trade-Offs Between Price And Other Terms

Introduction

The price positions described in the last section should be based on the requirements stated in the original solicitation, unless the requirements changed after proposals were received. If requirements have changed, all offerors must be notified of the change.

Requirement Changes

In noncompetitive discussions, all elements of the contract are subject to negotiated change during the negotiation process. In preparing for such negotiations, you should identify any changes in terms and conditions that you are willing to trade for certain related changes in price. The potential requirements changes could be either additions or deletions. The potential price changes should correspond with the value to the Government of the change in technical requirements. A technical requirements increase should result in a higher price objective, while technical requirements decrease should result in a lower price objective. A change in requirements that is neither an increase or decrease in overall technical requirements should result in no change to the price objective.

FAR 15.610(d)

In competitive discussions, no requirements changes can be made unless all offerors have an opportunity to offer a proposal on any change. Remember that technical leveling is prohibited.

You must obtain approval from appropriate Government technical personnel before suggesting or agreeing to any change in technical requirements. As you and the appropriate Government technical personnel agree on requirements changes that you would be willing to consider, develop an estimate of the related objective price change.

9.6 Consider Potential Trade-Offs Between Price And Other Terms (cont)

Format for Analyzing Potential Tradeoffs

The following chart provides a format for analyzing potential tradeoffs during negotiations. A data page containing the type of information described below will greatly speed negotiations and enable you to concentrate on the important issues involved.

TYPE OF CHANGE IN REQUIREMENTS	RELATED OBJECTIVE INCREASE	RELATED OBJECTIVE DECREASE
Technical Requirements:		
Inspection and Acceptance Terms:		
Delivery or Performance Terms:		
Contract Type:		
Socioeconomic Terms:		
Payment Terms:		
Government Furnished Property:		
Warranties:		
Patents and Rights in Data:		
Other Terms and Conditions:		

9.7 Determine The Need To Cancel And Resolicit

Introduction

FAR 15.608(b)

FAR 15.608(b) states that all proposals received in response to a solicitation may be rejected if the agency head determines in writing that:

FAR 7.3

(1) All otherwise acceptable proposals received are at unreasonable price.

(2) The proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith.

(3) A cost comparison as prescribed in OMB Circular A-76 and FAR 7.3 shows that performance by the Government is more economical.

(4) For other reasons, cancellation is clearly in the Government's interest.

(5) A violation or possible violation of Section 27 of the Office of Federal Procurement Policy Act, as amended, has occurred.

FAR 14.404-1(c)
FAR 3.104

Of the five reasons for rejecting all responses in a negotiated contract action, the first three duplicate reasons for rejection of bids presented in FAR 14.404-1(c) and examined in Chapter 8 of this text. The fifth reason is related to violation of the procurement integrity requirements set forth in the law and implemented by FAR 3.104.

9.7 Determine the Need to Cancel and Resolicit (cont)

Canceling and Resoliciting in the Government's Interest

The fourth reason presented for rejecting all responses in a negotiated contract action (canceling in the Government's interest) also duplicates a reason for rejection of bids presented in FAR 14.404-1(c)(10). This reason was not examined in Chapter 8, because it is not obviously related to contract pricing. However, a recent Comp Gen decision on a protest related to a negotiated acquisition demonstrates how affirmative answers to the following questions can be used to define the Government's interest:

- Will canceling the solicitation and resoliciting potentially increase competition?
- Will canceling the solicitation and resoliciting potentially produce cost savings to the Government?

Government Interest Cancellation Decision

Comp Gen B-235208

The Comptroller General (Comp Gen) decision in the matter of G.K.S., Inc. provides an example of rejecting all proposals in the Government's interest and resoliciting. In that case, the protestor, G.K.S., argued that the Air Force should not have canceled a solicitation because the new solicitation was not substantially different from the original. G.K.S. argued that an agency cannot cancel an RFP solely for the purpose of allowing another party to have an opportunity to participate in a resolicitation with identical requirements. Further, G.K.S. alleged that there was a fair and reasonable price available under the original RFP since its proposed price was less than prices paid by the Government in the previous 3 years and was 30 percent less than the Government's estimated unit price. G.K.S. also claimed that there was competition under the original RFP because three sources of supply were identified in the RFP and two of the identified sources submitted offers.

FAR 15.608(b)(4)

The Comp Gen found that, under FAR 15.608(b)(4), the procuring agency may reject all proposals where cancellation of the solicitation is clearly in the Government's best interest. Pursuant to this regulation, a procuring agency may cancel a negotiated procurement based on the potential for increased competition or cost savings. Thus, once the Air Force learned of the possibility of increased competition and cost savings because of a newly approved source, it could properly cancel the RFP and resolicit for the requirement. While the Air Force may not have been required to cancel, the Comp Gen found that the Air Force did act reasonably under the circumstances in canceling the RFP.

Chapter Vignette (cont)

Widget Acquisition (cont)

The decision process is not complete until you have documented the rationale for decisions that you made as you prepared to negotiate. In the next chapter, you will learn about standard documentation requirements.

Documentation CHAPTER 10

Chapter Vignette

Widget Acquisition (cont)

As you prepare to award your widget contract, you must document the pricing actions that you have taken and the decisions that you have made. As you read this chapter, you will see that negotiated contract actions typically require more documentation than those completed using sealed bidding. There are two obvious reasons:

1. *Typically, negotiations involve more complex requirements and more unknowns than you can accept in sealed bidding.*

2. *Negotiated contract actions typically require more decisions than sealed bidding, and each decision requires documentation.*

Read the following chapter and relate what you read to the widget purchase. Think about how you would tell the widget story. Remember, you must assume that the readers know nothing, except what you tell them, about widgets or the contract action.

Learning Objectives

At the End of This Chapter

At the end of this chapter you will be able to:

Classroom Learning Objective 10/1
Identify the price-related sections of the contract file and what must be documented in those sections of the file.

Classroom Learning Objective 10/2
Identify principle elements of a price negotiation memorandum (PNM).

In This Chapter

In this chapter, you will learn about the pricing documentation required in sealed bidding and in negotiations where the pricing decision is based exclusively or primarily on price analysis.

SECTION	DESCRIPTION	SEE PAGE
10.1	Document Pricing Actions in Sealed Bidding	10-5
	10.1.1 Record All Bids	10-6
	10.1.2 Record the Reason for Rejection of Bids	10-12
	10.1.3 Record How Any Ties Were Broken	10-16
	10.1.4 Identify the Basis for Considering the Award Price Reasonable	10-17
10.2	Document Pricing Actions in Negotiations	10-18

Procedural Steps

The following figure shows the sequence of events or steps that you should follow to learn about the pricing documentation required in sealed bidding and in negotiations where the pricing decision is based exclusively or primarily on price analysis.

10.0 Introduction (cont)

Need for Good Documentation

Good documentation is essential to good contracting. As time goes on, you forget times, dates, persons involved, and other elements that are important in all aspects of contracting and pricing in particular.

While fresh in your mind, you should document:

- Events
- Actions
- Decisions

Problems From Poor Documentation

Lack of good documentation can create serious problems. Since you will not always be available to explain what you did, or why, other contracting personnel will not know what happened, or about any special circumstances that may have occurred. Possible situations that can result from lack of documentation are:

- Other contracting personnel may take the time to accomplish an action or make a decision that you have already completed. These actions or decisions may conflict with yours.
- Legal advisors and management review teams may question your action or lack of action because they do not have all of the relevant information.
- If disputes arise, you will find that lack of documentation is generally treated as a lack of action. If it is not documented, it never happened.

10.1 Document Pricing Actions In Sealed Bidding

Overview

In This Section

In this section you will learn how to:

TOPIC	SEE PAGE
10.1.1 Record All Bids	10-6
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10.1.3 Record How Any Ties Were Broken	10-16
10.1.4 Identify the Basis for Considering the Award Price Reasonable	10-17

10.1.1 Record All Bids

Introduction
FAR 14.403(a)

As soon as practicable after opening, the bid opening officer must assure that all bids are accurately recorded and certified.

Forms to Be Completed
FAR 14.403(a)
FAR 14.403(c)

Except for the Defense Fuel Supply Center, in the acquisition of natural gas, petroleum or coal, and the Defense Personnel Support Center, in the acquisition of perishable subsistence items, bids must be recorded on one of the following forms:

- Standard Form (SF) 1409, Abstract of Offers.
- Optional Form (OF) 1419, Abstract of Offers—Construction.
- An automated equivalent to one of the above forms.

For your information, blank copies of the SF 1409 and the OF 1419 are shown on the following pages. Each of the forms identifies the information required for completion. Agencies and contracting offices may establish additional documentation requirements.

Acquisitions With Numerous Bid Items
FAR 14.403(a)

In situations where bid items are too numerous to warrant complete recording of all bids, you may limit abstract entries for individual bids to the item numbers and bid prices. In preparing these forms, use the extra columns of the SF 1409 or OP 1419 to record the information that the contracting office deems necessary. If needed, the following forms can be used:

- SF 1410, Abstract of Offers—Continuation, with the SF 1409.
- OF 1419A, Abstract of Offers—Construction, Continuation Sheet, with the OF 1419.

Blank copies of these forms also appear on the following pages.

ABSTRACT OF OFFERS	SOLICITATION NO.	OPENING DATE	PAGE OF PAGES
ISSUING OFFICE		SUPPLIES OR SERVICES *(General Description)*	

NO.	NAME OF OFFEROR	ACCEPTANCE TIME (Days)	BUSINESS SIZE L	BUSINESS SIZE S	ITEM NO. ▶ QUANTITY ▶ UNIT ▶				DELIVERY TIME**	F.O.B POINT	REMARKS
						$	$	$			

* *Indicate by an X a 60-day acceptance.* ** *Indicate by an X if Offer conforms to delivery time specified in solicitation.*	I CERTIFY THAT I HAVE OPENED, READ AND RECORDED ON THIS ABSTRACT (AND CONTINUATION SHEETS, IF ANY) ALL OFFERS RECEIVED IN RESPONSE TO THE SOLICITATION.	TYPED NAME AND TITLE	
		SIGNATURE	DATE

NSN 7540-01-142-9844

1409-102

STANDARD FORM 1409 (REV. 9-88)
Prescribed by GSA, FAR (48 CFR) 53-214(1)

ABSTRACT OF OFFERS - CONSTRUCTION

1. SOLICITATION NUMBER

2. DATE ISSUED

3. DATE OPENED

PAGE OF PAGES

4. ISSUING OFFICE

I CERTIFY that I have opened, read, and recorded on this abstract all offers received in response to this solicitation.

NAME AND TITLE OF CERTIFYING OFFICIAL (TYPE)

SIGNATURE

DATE ISSUED

5. PROJECT TITLE

6. NUMBER OF AMENDMENTS ISSUED

8. GOVERNMENT ESTIMATE
(CHECK A, B, or C and complete D, E, and F)

A. HIRED LABOR

B. REASONABLE CONTRACT (Without Profile)

C. REASONABLE CONTRACT (Without Profile)

9. OFFERS

NO. 1

A. OFFEROR

B. BID SECURITY (Type and Amount)

C. AMENDMENTS ACKNOWLEDGED

NO.2

A. OFFEROR

B. BID SECURITY (Type and Amount)

C. AMENDMENTS ACKNOWLEDGED

7A. ITEM NO.	7B. DESCRIPTION OF OFFERED ITEM	7C. EST. QUANTITY	D. UNIT	D. UNIT PRICE	E. ESTIMATED AMOUNT	D. UNIT PRICE	E. ESTIMATED AMOUNT	D. UNIT PRICE	E. ESTIMATED AMOUNT

NSN 7540-01-150-0981 501419-101

NOTE: If more than two offers are received, continue on OF 1419A.

OPTIONAL FORM 1419 (11-88)
Prescribed by GSA - FAR (48 CFR) 53.236-1

ABSTRACT OF OFFERS-CONTINUATION

PAGE OF PAGES

NO.									
	ITEM NO. ►								
	QUANTITY ►								
	UNIT ►								
		$	$	$	$	$	$	$	$

NSN 7540-01-280-5501 **1410-101** **STANDARD FORM** 1410 (Rev. 9-88)
Prescribed by GSA, FAR (48 CFR) 53.214(f)

ABSTRACT OF OFFERS - CONSTRUCTION CONTINUATION SHEET

1. SOLICITATION NUMBER

PAGE OF PAGES

INSTRUCTIONS- Attach this form to OF 1419, Abstract of Offers - Construction, when more than 2 offers are received on a construction project. Each Continuation Sheet will accommodate 14 contract items on conform to the number of items which can be entered on the OF 1419. Use additional OF 1419's for contract item in excess of 14 and attach additional Continuation Sheets (OF 1419A) as needed.

2. PROJECT TITLE

3. CONTRACT ITEMS			4. OFFERS (Continued)							
			NO.____		NO.____		NO.____		NO.____	
			A. OFFEROR		A. OFFEROR		A. OFFEROR		A. OFFEROR	
			B. BID SECURITY (Type and Amount)		B. BID SECURITY (Type and Amount)		B. BID SECURITY (Type and Amount)		B. BID SECURITY (Type and Amount)	
			C. AMENDMENTS ACKNOWLEDGED		C. AMENDMENTS ACKNOWLEDGED		C. AMENDMENTS ACKNOWLEDGED		C. AMENDMENTS ACKNOWLEDGED	
A. ITEM NO.	B. ESTIMATED QUANTITY	C. UNIT	D. UNIT PRICE	E. ESTIMATED AMOUNT	D. UNIT PRICE	E. ESTIMATED AMOUNT	D. UNIT PRICE	E. ESTIMATED AMOUNT	D. UNIT PRICE	E. ESTIMATED AMOUNT

NSN 7540-01-280-5502 501419-201 OPTIONAL FORM 1419A (11-88)
Prescribed by GSA - FAR (48 CFR) 53.236-1

10.1.1 Record All Bids (cont)

Make Abstracts Available for Public Inspection

FAR 14.403(b)

FAR Subpart 24.2

You must make abstracts of offers for unclassified acquisitions available for public inspection. However, publicly displayed abstracts must not contain:

- Information on any failure to meet minimum standards or responsibility.
- Information on apparent collusion of bidders.
- Other notations properly exempt from disclosure to the public in accordance with agency regulations implementing FAR Subpart 24.2, Freedom of Information Act.

10.1.2 Record the Reason for Rejection of Bids

Introduction

An individual bid may be rejected or an entire solicitation canceled for pricing related reasons. Whenever such action is taken, you must clearly document the facts leading to the decision, as well as the decision itself.

Documenting a Suspected Mistake in Bid

FAR 14.404-2(f)
FAR 14.407-1

Any bid may be rejected if you, as the contracting officer, determine in writing that the price is unreasonable. Unreasonableness of price includes the total price of the bid, as well as the prices of individual items.

Typically, the rejection of an individual bid because of unreasonable pricing begins with an alleged or suspected mistake in bid. Whenever you suspect a mistake in bid, you must call the bidders attention to the suspected mistake and request the bidder to verify the bid in writing.

Documentation of the verification process SHOULD include:

- A record of the request for verification. If the request is made orally, the key points of the conversation must be documented in the contract file. If the request is made in writing, retain a copy in the contract file.
- Also retain a copy of the offeror’s written response in the contract file.

Documenting Rejection of an “Unfair Bid”

FAR 14.407-3(g)(5)

If the bidder fails or refuses to furnish evidence to support the mistake in bid, consider the bid as submitted, unless you determine that one of the following situations exists:

- The amount of the bid is so far out of line with the amounts of other bids received, or with the amount estimated by the agency, or determined by the contracting officer as reasonable, as to reasonably justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders.
- There are indications of error so clear as to reasonably justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders.

10.1.2 Record the Reason for Rejection of Bids (cont)

Documenting Rejection of an "Unfair Bid" (cont)

Documentation concerning rejection of an "unfair bid" MUST include a record of all attempts made to obtain the information required and the action taken with respect to the bid.

Documentation SHOULD also include:

- Evidence supporting the determination that the bid is "far out of line" with other bids or the agency estimate or other indications that the bid is unfair to the bidder or other bona fide bidders.
- A clear determination that one or both of the FAR 14.407-3(g)(5) situations exist.
- A copy of the bidder notification of bid rejection.

Comp Gen B-237968

The following quote, concerning a protest by Pamfilis Painting, Inc., demonstrates the importance of clear "unfair bid" documentation.

> "A contracting officer's decision to reject an apparently mistaken bid under the authority of the Federal Acquisition Regulation 14.407-3(g)(5) **is subject to question only where it is shown to be unreasonable**. … Moreover, an obviously erroneous bid may not be accepted even if it is verified by the bidder. Id.
>
> "The contracting officer's decision to reject Pamfilis's bid was reasonable. **The record demonstrates that there is a significant disparity in Pamfilis's bid and the government estimate for many elements of work which creates reasonable doubt that the protester understood the scope of work required by the IFB**. **… the record indicates that the Navy questioned** whether Pamfilis's bid included the costs associated with (1) the specialty painting required in the solicitation, i.e., railing and trim painting, metal and fence painting;
> (2) demolition, (3) quality assurance, and (4) utilities, water, scaffolding and tools. While Pamfilis denies any mistake in its bid and continues to maintain that its total bid price is reasonable and includes all costs reasonably associated with all items of work to be performed, **the protester has not furnished any probative evidence to support its bid calculations. As noted above, Pamfilis was repeatedly asked to furnish its original work papers which Pamfilis has failed to provide**. In view thereof, and in view of the disparities between Pamfilis's bid and the government estimate, the contracting officer reasonably rejected Pamfilis's bid as mistaken." (emphasis added)

10.1.2 Record the Reason for Rejection of Bids (cont)

Documenting Rejection of an Unbalanced Bid

FAR 14.404-2(g)

Any bid may be rejected if the prices for any line items or subline items are materially unbalanced. REMEMBER that a bid is materially unbalanced if it is mathematically unbalanced and one of the following is true:

- There is reasonable doubt that the lowest evaluated bid will actually result in the lowest cost to the Government.
- The offer is so grossly unbalanced that its acceptance would appear to allow advanced payments.

Documentation SHOULD include:

- Data on the price analysis that indicated a materially unbalanced price.
- A clear determination that the bid is unbalanced, citing one or both of the reasons identified above.
- A copy of the bidder notification of bid rejection.

10.1.2 Record the Reason for Rejection of Bids (cont)

Documenting Invitation Cancellation for Pricing Related Reasons

FAR 14.404-1(c)

As you learned earlier in the text, five of eleven reasons for canceling an IFB after bid opening are directly related to pricing decisions. The relevant subparagraphs of FAR 14.404-1(c) are:

(4) The invitation did not provide for consideration of all factors of cost to the Government, such as cost of transporting Government-furnished property to bidders' plants.

(5) Bids received indicate that the needs of the Government can be satisfied by a less expensive article differing from that for which the bids were invited.

(6) All otherwise acceptable bids received are unreasonable prices, or only one bid was received and the contracting officer cannot determine the reasonableness of the bid price.

(7) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith.

(9) A cost comparison as prescribed in OMB Circular A-76 and Subpart 7.3 shows that performance by the Government is more economical.

Documentation MUST include a written determination by the agency head, or designee, that one of the situations identified above exists and presents a compelling reason for canceling the solicitation.

Documentation SHOULD also include:

- All the findings that led to the decision — including, in the case of 14.404-1(c)(6) — data supporting the contracting officer's conclusion that all bids received are unreasonable (e.g., in comparison to commercial prices, historical prices, the Independent Government Estimate, et. al.).
- The specific reason for the cancellation, including the authorizing FAR reference.
- A copy of the bidder notification of bid rejection.

10.1.3 Record How Any Ties Were Broken

Introduction

FAR 14.408-6(a)
FAR 14.408-6(b)

When two or more bids are equal in ALL respects, contract must be awarded in the following order of priority:

1) Small business concerns that are also labor surplus area concerns.
2) Other small business concerns.
3) Other business concerns.
4) If two or more bidders remain tied, the tie must be broken by a drawing by lot limited to the tied bidders. If time permits, the bidders involved must be given the opportunity to attend the drawing. The drawing must be witnessed by at least three persons.

Tie Breaking Documentation

FAR 14.408-6(c)

FAR 14.408-6(b)

You MUST include in the documentation:

- A written agreement that the contractor will perform, or cause to be performed, the contract in accordance with the circumstances justifying the priority used to break the tie or select bids for a drawing by lot.
- A record of how the tie was broken. The record should consider the order of priority of tie breaking criteria and the offerors eliminated by each criterion.
- If applicable, the names and addresses of at least three individuals who witnessed the drawing by lot and the person who supervised the drawing.

10.1.4 Identify the Basis for Considering the Award Price Reasonable

Introduction

FAR 14.408-2

You must determine that the prices offered are reasonable before making a contract award. In each case, the determination must consider all relevant circumstances. Take particular care in cases where only a single bid is received.

Document in the Contract File

FAR 14.408-7(a)
FAR 14.103-2
FAR 14.408-7(b)

Whenever you award a contract, you MUST document the following in the contract file:

- Compliance with FAR 14.103-2, including FAR 14.103-2(d), which requires that award be made to the responsible bidder whose bid is responsive to the terms of the IFB and is most advantageous to the Government, considering only price and price-related factors included in the IFB.
- That the accepted bid was the lowest bid received, or list all lower bids with reasons for their rejection in sufficient detail to justify the award. If bids are rejected for price-related reasons, include details, or reference to details, of the price analysis supporting the rejection decision.

FAR 14.408-2(a)

By awarding the contract, you, as the contracting officer, demonstrate an affirmative decision that the price is reasonable.

10.2 Document Pricing Actions In Negotiations

Introduction

Requirements for documentation of negotiations vary with the dollars involved. In this section you will learn about documentation of both simplified acquisitions and contracts.

Micro-purchase Documentation

FAR 13.603(b)

The administrative cost of verifying the reasonableness of the price of purchases at or below the micro-purchase threshold may more than offset potential savings from detecting overpricing. Action to verify price is only required when you:

- Suspect or have information to indicate that the price may not be reasonable (e.g., comparison with previous prices or personal knowledge).
- Purchase an item for which no comparable pricing information is readily available (e.g., a supply or service that is not the same as or similar to other supplies or services that you have recently purchased on a competitive basis).

Since there is no requirement for analysis, NO DOCUMENTATION IS REQUIRED UNLESS YOU ARE REQUIRED TO TAKE ACTION TO VERIFY PRICE REASONABLENESS. When you are required to take action to verify price reasonableness, documentation MUST be sufficient to establish price reasonableness. Award demonstrates an affirmative decision that the price is reasonable.

10.2 Document Pricing Actions In Negotiations (cont)

Other Simplified Acquisition Document-ation

FAR 13.106-2

Other simplified acquisitions REQUIRE a determination that the price is reasonable:

- When possible, the determination will be based on price competition.
- When you only receive one quote, you should make your decision using one of the following bases for price analysis:
    - ◊ Past prices that have been determined to be fair and reasonable
    - ◊ Current price lists
    - ◊ Catalogs
    - ◊ Advertisements
    - ◊ Similar items in a related industry
    - ◊ Value analysis
    - ◊ Personal knowledge
    - ◊ Any other reasonable basis

Your documentation MUST also include:

- All quotes
    - ◊ If an oral solicitation is used, include an informal record of oral price quotations.
    - ◊ If a written solicitation is used, include an abstract or notes to show prices, delivery, references to printed price lists used, the vendor or vendors contacted, and other pertinent data.
- If you do not have adequate price competition, describe the analysis used to determine price reasonableness.
- If you only solicit one source, explain the absence of competition, unless the contract is for utility services available from only one source or educational services from nonprofit institutions.
- When you consider criteria other than price-related factors in selecting the supplier, document the rationale used in making your final award decision. Be sure to explain the role that price analysis played in your decision.

10.2 Document Pricing Actions In Negotiations (cont)

Prenegotiation Documentation for Other Than Simplified Acquisitions

FAR 15.807(b)
FAR 15.808(a)

Contracting officers must "establish prenegotiation objectives before the negotiation of any pricing action. The scope and depth of the analysis supporting the objectives should be directly related to the dollar value, importance, and complexity of the pricing action."

In some contracting activities, contracting officers prepare written **prenegotiation memoranda** to document these prenegotiation objectives. Whether you work for such an activity or not, you should draft the following elements of the Price Negotiation Memorandum (PNM) **before** discussions: [1]

- Purpose of the negotiation (new contract, final pricing, etc.)
- Description the acquisition, including appropriate identifying numbers (e.g., RFP number).
- If the offeror was not required to submit cost or pricing data required to support any price negotiation over the cost or pricing data threshold, the exception used and the basis for using it.
- A summary of the contractor's proposal, field pricing, and internal analyses. The reasons for any pertinent variances should be carefully summarized.
- Summarize of the most significant facts or considerations controlling the establishment of the prenegotiation price objective.

[1] Note: Additional information is required if you used cost analysis in preparing your negotiation objectives.

10.2 Document Pricing Actions In Negotiations (cont)

Price Negotiation Memorandum for Other Than Simplified Acquisitions

FAR 15.808(a)

At the close of each negotiation, you MUST promptly prepare a memorandum of the principle elements of the price negotiation and include a copy in the contract file. The memorandum, commonly referred to as the price negotiation memorandum (PNM), MUST include the following information: [1]

- State the purpose of the negotiation (new contract, final pricing, etc.)
- Description of the acquisition, including appropriate identifying numbers (e.g., RFP number).
- The name, position, and organization of each person representing the contractor and the Government in negotiations.
- If the offeror was not required to submit cost or pricing data required to support any price negotiation over the cost or pricing data threshold, the exception used and the basis for using it.
- A summary of the contractor's proposal, field pricing, and internal analyses. The reasons for any pertinent variances should be carefully summarized.
- A summary of the most significant facts or considerations controlling the establishment of the prenegotiation price objective and the negotiated price, including an explanation of any significant differences between the two positions. To the extent that direction is received, the PNM must discuss and quantify the effect of the direction given by groups or individuals not normally exercising authority during the award and review process, if such direction has significant impact.

[1] Note: Additional information is required if you used cost analysis in determining price reasonableness.

10.2 Document Pricing Actions In Negotiations (cont)

Additional Documentation for Other Than Simplified Acquisitions

In preparing your prenegotiation documentation or the PNM, you SHOULD also document any important aspects of the procurement situation that could reasonably affect your pricing decision:

- Describe the items or services being purchased.
- Indicate the quantities being purchased.
- Identify the unit prices proposed and negotiated.
- Identify the place of contract performance.
- Describe the delivery schedule or period of performance.
- State whether there is a difference between the proposed delivery schedule, the objective schedule, and the final negotiated schedule.
- State whether there have been any previous buys of similar products; if so, identify:
  - ◊ When.
  - ◊ How many.
  - ◊ Schedule/production rate.
  - ◊ Contract type.
  - ◊ Unit prices or total prices, including both target and final prices, if applicable.
- Identify whether Government-furnished material will be provided as a result of the contract, and if so, its estimated dollar value.
- Describe any unique aspects of the procurement action.
- Describe any outside influences or time pressures associated with the procurement, for example, procurement priority and funding limitations, etc.

In the final paragraphs of the PNM, you SHOULD include a determination that the negotiated price is considered fair and reasonable. If the price is not reasonable, state this fact in the PNM, along with the reasons for acceptance of an unreasonable price.

Chapter Vignette (cont)

Widget Acquisition (cont)

As you complete the required documentation, you complete the pricing action. There is no magic involved but ***good analysis and good documentation*** *are essential. Clear documentation can help you obtain reasonable prices. Clear documentation can also help you explain why you paid the price that you did. REMEMBER, you do not want to be the next buyer accused of buying a common hammer for $435! A unique hammer may be worth $435, but without clear documentation, no one will know the difference!*